

**AMENDMENTS TO CHAPTER 9 OF THE FAIRFAX COUNTY CODE  
RELATING TO CABLE TELEVISION**

AN ORDINANCE to amend the Fairfax County Code by adding a new chapter numbered 9.1 and by repealing Chapter 9, relating generally to cable regulation and franchising.

Be it ordained by the Board of Supervisors of Fairfax County:

1. That the Fairfax County Code is amended by adding a new chapter number 9.1 as follows:

**ARTICLE 1.**

**Short Title; General Provisions.**

**Section 9.1-1-1. Short title.**

This ordinance shall be known as the Fairfax County Communications Ordinance.

**Section 9.1-1-2. Existing rights.**

Nothing in this Chapter shall be deemed to abrogate the constitutionally protected rights of a Cable system operating in the County on the date of the adoption of this ordinance.

1                                   **ARTICLE 2.**

2                                   **Definitions.**

3   **Section 9.1-2-1. Definitions.**

4           The following words and phrases when used in this Chapter shall, for the purpose of this  
5 Chapter, have the meanings respectively ascribed to them in this Section except in those  
6 instances where the context clearly indicates a different meaning:

7           *Access channel* means any channel on a Cable system set aside by a Grantee for public,  
8 educational, or governmental use.

9           *Affiliate* means any Person who owns or controls, is owned or controlled by, or is under  
10 common ownership or control with a Grantee. For purposes of this definition, “owns” means an  
11 ownership interest of more than five percent.

12           *Basic service* means (i) any service tier that includes the retransmission of local television  
13 broadcast signals; (ii) any public, educational, and governmental access programming required  
14 by a Franchise agreement to be provided to Subscribers as basic service; and (iii) any additional  
15 video programming signals or services added to basic service by a Grantee.

16           *Board* means the Board of Supervisors of the County of Fairfax, Virginia.

17           *Cable Act* means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et  
18 seq., as amended from time to time.

19           *Cable service* means: (i) the one-way transmission to Subscribers of video programming  
20 or other programming services; and (ii) Subscriber interaction, if any, which is required for the  
21 selection or use of such video programming or other programming service.

22           *Cable system or system* means a facility, consisting of a set of closed transmission paths  
23 and associated signal generation, reception and control equipment that is designed to provide

1 Cable service which includes video programming and which is provided to multiple Subscribers  
2 within the County, except that such definition shall not include: (i) a system which serves fewer  
3 than twenty Subscribers; (ii) a facility that serves only to retransmit the television signals of one  
4 or more television broadcast stations; (iii) a facility which serves Subscribers without using any  
5 public ways; (iv) a facility of a common carrier which is subject, in whole or in part, to the  
6 provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201, et seq., except that  
7 such facility shall be considered a Cable system (other than for purposes of 47 U.S.C. § 541(c))  
8 to the extent such facility is used in the transmission of video programming directly to  
9 Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v)  
10 an open video system that complies with 47 U.S.C. § 573; (vi) any facilities of any electric utility  
11 used solely for operating its electric systems; or (vii) any portion of a system that serves fewer  
12 than fifty Subscribers in the County where such portion is a part of a larger system franchised in  
13 an adjacent county, city or town. The foregoing definition of “cable system” shall not be deemed  
14 to circumscribe or limit the valid authority of the County to regulate or franchise the activities of  
15 any other communications system or provider of communications services to the full extent  
16 permitted by law.

17 *Channel* means a portion of the electromagnetic frequency spectrum that is used in a  
18 Grantee’s Cable system and that is capable of delivering a video signal as that term is defined by  
19 the Federal Communications Commission.

20 *Communications Administrator* means the present or succeeding employee of Fairfax  
21 County designated as the Cable Television Administrator or as the Communications  
22 Administrator who shall have the duties prescribed in this Chapter and otherwise prescribed by  
23 the Board.

1            *County* means the County of Fairfax, Virginia, excluding the Towns of Clifton, Herndon,  
2            and Vienna.

3            *Customer* means “Subscriber” or “former Subscriber”.

4            *Educational Access Channel or Educational Channel* means any Channel required by a  
5            Franchise agreement to be provided by a Grantee on its Basic service tier to the County for  
6            educational use.

7            *Equitable Price* means fair market value adjusted downward for the harm to the County  
8            or Subscribers, if any, resulting from a Grantee’s breach of its Franchise agreement or violation  
9            of this Chapter, and as further adjusted to account for other equitable factors that may be  
10           considered consistent with 47 U.S.C. § 547.

11           *Fair market value* means the price which property will bring when it is offered for sale by  
12           one who desires, but is not obligated, to sell it, and is bought by one who is under no necessity of  
13           having it.

14           *Federal Communications Commission or FCC* means that Federal agency as presently  
15           constituted by the Communications Act of 1934, as amended, its designee, or any successor  
16           agency.

17           *Force Majeure* means, notwithstanding any other provision of this Chapter or a Franchise  
18           agreement, that a Grantee shall not be liable for delay in performance of, or failure to perform, in  
19           whole or in part, its obligations pursuant to this Chapter or a Franchise agreement due, directly or  
20           indirectly, to severe or unusual weather conditions, strike, labor disturbance, lockout, war or act  
21           of war (whether an actual declaration of war is made or not), insurrection, riot, act of public  
22           enemy, action or inaction of any government instrumentality or public utility including  
23           condemnation, accidents for which a Grantee is not primarily responsible, fire, flood or other act

1 of God, sabotage or other events to the extent that such causes or other events are beyond the  
2 reasonable control of a Grantee. In the event that any such delay in performance or failure to  
3 perform affects only part of a Grantee's capacity to perform, a Grantee shall perform to the  
4 maximum extent it is able to perform and shall take all reasonable steps within its power to  
5 correct such cause(s) in as expeditious a manner as possible.

6 *Franchise* means a nonexclusive initial authorization, or renewal thereof, issued by the  
7 County which authorizes the construction, maintenance or operation of a Cable system along the  
8 public ways within one or more specified Franchise areas of the County with boundaries as  
9 described in [Section 9.1-7-1](#). A Franchise shall not be construed to include any general license  
10 required for the privilege of transacting and carrying on a business within the County as may be  
11 required by other ordinances and laws of the County, or for attaching devices to poles or  
12 structures, whether owned by the County or a private entity, or for excavating or performing  
13 other work in or along public ways, unless otherwise provided in a Grantee's Franchise  
14 agreement.

15 *Franchise agreement* means a contract entered into pursuant to this Chapter between the  
16 County and a Grantee that sets forth, subject to this Chapter, the terms and conditions under  
17 which a Franchise will be granted and exercised.

18 *Franchise area* means each of the North County, South County, or Reston Franchise  
19 areas of the County, with boundaries as more fully described in [Section 9.1-7-1](#), that a Grantee is  
20 authorized to serve by its Franchise agreement.

21 *Governmental Access Channel or Government Channel* means any Channel required by a  
22 Franchise agreement to be provided by a Grantee on its Basic service tier to the County for  
23 government use.

1           *Grantee* means a natural Person, domestic or foreign corporation, partnership, limited  
2 liability company, association, joint venture or organization of any kind granted a Franchise by  
3 the Board under this ordinance, and any lawful successor thereto, or transferee or assignee  
4 thereof.

5           *Gross revenues* means any and all cash, credits, property or consideration of any kind or  
6 nature from the operation of the Cable system to provide Cable services as specified in a  
7 Franchise agreement arising from, attributable to, or in any way derived directly or indirectly by  
8 a Grantee, its affiliates, or any Person in which a Grantee has a financial interest, or by any other  
9 entity that is a cable operator of the system. Gross revenues shall not include any taxes on  
10 services furnished by a Grantee which are imposed directly on any Subscriber or user by the  
11 Commonwealth of Virginia, the County, or other governmental unit and which are collected by a  
12 Grantee on behalf of said governmental unit or as specified in a Franchise agreement. A  
13 franchise fee is not such a tax. Gross revenues shall not include any revenues specifically  
14 excluded in a Grantee's Franchise agreement.

15           *Leased access channel* means any channel on a Cable system designated or dedicated for  
16 use by a Person unaffiliated with a Grantee pursuant to 47 U.S.C. § 532.

17           *Normal operating conditions* means those conditions that are within the control of the  
18 Grantee. Conditions that are not within the control of the Grantee include, but are not limited to,  
19 natural disasters, civil disturbances, power outages, telephone network outages, weather or traffic  
20 conditions impairing construction or normal operation activities, vandalism, accidents for which  
21 Grantee is not primarily responsible, sabotage, and the action or inaction of any governmental  
22 unit. Consistent with the foregoing, conditions that are within the control of Grantee include, but  
23 are not limited to, special promotions, pay-per-view events, rate increases, regular or reasonably

1     anticipatable peak or seasonal demand periods, and construction, maintenance or upgrade of  
2     Grantee's Cable system.

3             *PEG* means public, educational, and governmental.

4             *Person* means an individual, partnership, association, joint stock company, organization,  
5     corporation, joint venture, limited liability company, or any lawful successor thereto or  
6     transferee thereof, but such term does not include the County.

7             *Public access channel* means any Channel required by a Franchise agreement to be  
8     provided by a Grantee on its Basic service tier to the County or set aside by a Grantee for use by  
9     the general public, including groups and individuals, and which is available for such use on a  
10    non-discriminatory basis.

11            *Public way or Public Rights-of-Way* means the surface, the air space above the surface,  
12    and area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard,  
13    drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public  
14    water or public easements, or other public way within the County, which, consistent with the  
15    purposes for which it was dedicated, may be used for the purpose of installing and maintaining a  
16    Cable system.

17            *Rate regulated services* means all services, including related equipment and installation  
18    fees, subject to rate regulation by the County pursuant to applicable federal and Virginia law.

19            *Regular subscriber service* means the distribution to Subscribers of signals over a Cable  
20    system on all channels except those for which a per-program or per-channel charge is made, two-  
21    way services, and those services intended for reception by equipment other than a television  
22    receiver.

23            *Service interruption* means the loss of picture or sound on one or more cable channels.

1        *Service tier* means a category of Cable service or other services provided by a Grantee  
2        and for which a separate rate is charged by the Grantee.

3        *Subscriber* means any Person who legally receives or contracts with a Grantee to receive  
4        Cable service(s) and does not further distribute such Cable service(s).

5        *User* means any Person or organization using a PEG or leased access channel or  
6        equipment and facilities for purposes of producing or transmitting material, as contrasted with  
7        the receipt thereof in the capacity of a Subscriber.

8        *Video programming* means programming provided by, or generally considered  
9        comparable to programming provided by, a television broadcast station.



**ARTICLE 3.****Franchises.****Section 9.1-3-1. Requirement of a Franchise.**

No Person shall construct, install, maintain or operate a Cable system or part of a Cable system on, over, through, or within a public way in the County, or on, over, through, or within any other public property of the County, unless that Person has been granted a Franchise by the Board and its Franchise agreement is in full force and effect.

**Section 9.1-3-2. Grant of Franchise.**

(a) The Board may grant one or more non-exclusive cable franchises, and each such Franchise shall be awarded by ordinance in accordance with and subject to the provisions of this Chapter.

(b) This Chapter may be amended from time to time, and in no event shall this Chapter be considered a contract between the County and a Grantee such that the County would be prohibited from amending any provision hereof.

(c) A Franchise agreement may only be amended by mutual written consent of the Board and Grantee.

**Section 9.1-3-3. Acts at Grantee's expense.**

Any act that a Grantee is or may be required to perform under this Chapter, a Franchise agreement or applicable law shall be performed at the Grantee's expense, unless expressly provided to the contrary in this Chapter, a Franchise agreement, or applicable law.

**Section 9.1-3-4. Eminent Domain.**

Nothing in this Chapter shall be deemed or construed to impair or affect, in any way or to any extent, the County's rights of eminent domain.

**Section 9.1-3-5. Application for grant of an initial Franchise.**

(a) An application for a cable Franchise shall be submitted to the Communications Administrator in writing. Applications for one or more Franchise areas shall be accompanied by a non-refundable application fee of Six Thousand Dollars payable to the order of the "County of Fairfax," which amount may be used by the County to offset, in whole or in part, direct expenses incurred in the franchising and evaluation procedures, including but not limited to staff time and consulting assistance. Payments made by an applicant under this Section are not franchise fees. To be acceptable for filing, a signed original of the application shall be submitted together with twelve copies. The application must conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of Persons authorized to act on behalf of all applicants with respect to the application, in accordance with this Chapter.

(b) At the time of filing an application for a Franchise area or areas pursuant to this Section, an applicant shall obtain, pay all premiums for, and deliver to the County written evidence of payment of premiums and originals of a bond or bonds running to the County with good and sufficient surety in the amount of Five Hundred Thousand Dollars.

(1) Such bond(s) shall be in a form acceptable to the County and shall protect the County from all damages or losses arising from the failure of the Grantee to accept the Franchise awarded in conformity with this Chapter, or to strictly adhere to the substance of its Franchise proposal.

(2) Such bond or bonds shall be maintained for a period of two years from the time of a Grantee's acceptance of a Franchise.

1           (c)     The application for a grant of an initial Franchise shall provide, at a minimum, the  
2 following information:

3                   (1)     The name and address of the applicant and an identification of the  
4 ownership and control of the applicant, including: the names and addresses of the ten largest  
5 holders of an ownership interest in the applicant and affiliates of the applicant, and all Persons  
6 with five percent or more ownership interest in the applicant and its affiliates; the Persons who  
7 control the applicant and its affiliates; all officers and directors of the applicant and its affiliates;  
8 and any other business affiliation and cable system ownership interest of each named Person.

9                   (2)     A demonstration of the applicant's technical ability to construct and/or  
10 operate the proposed Cable system, including identification of key personnel.

11                  (3)     A demonstration of the applicant's legal qualifications to construct and/or  
12 operate the proposed Cable system, including but not limited to a demonstration that the  
13 applicant meets the following criteria:

14                           (A)     The applicant shall have the necessary authority under Virginia  
15 law to operate a Cable system;

16                           (B)     The applicant shall have the necessary authority under federal law  
17 to hold the Franchise and to operate a Cable system. An applicant must have, or show that it is  
18 qualified to obtain, any necessary federal licenses or authorizations required to operate the  
19 system proposed;

20                           (C)     The applicant shall report if, at any time during the ten years  
21 preceding the submission of the application, the applicant was convicted of any act or omission  
22 of such character that the applicant cannot be relied upon to deal truthfully with the County and  
23 the Subscribers of the Cable system, or to substantially comply with its lawful obligations under

1 applicable law, including obligations under consumer protection laws and laws prohibiting  
2 anticompetitive acts, fraud, racketeering, or other similar conduct. This same criterion shall be  
3 applied to each party owning an interest of five percent or more in the applicant;

4 (4) A demonstration of the financial qualifications of the applicant, including  
5 at least the following:

6 (A) The applicant's proposed rate structure, including projected  
7 charges for each service tier, installation, converters and other proposed equipment or services;

8 (B) A statement prepared by a certified public accountant regarding the  
9 applicant's financial ability to complete the construction proposed, to meet the time frame  
10 proposed, and to operate the Cable system proposed; and

11 (C) Pro forma financial projections for the proposed franchise term,  
12 including a statement of projected income, and a schedule of planned capital expenditures, with  
13 all significant assumptions explained in notes or supporting schedules.

14 (5) A description of the applicant's prior experience in Cable system  
15 ownership, construction, and operation, and a listing of communities in which the applicant has a  
16 cable franchise. For each community identified pursuant to this provision, the applicant shall  
17 provide the name, address and telephone number of the local franchising authority.

18 (6) A detailed description of the physical facilities proposed, which shall  
19 include at least the following:

20 (A) A description of the proposed system's channel capacity, technical  
21 design, performance characteristics, headend, and access (and institutional network) facilities  
22 and equipment;

1 (B) The description of the proposed system and system design,  
2 including a description of the miles of plant to be installed, and a description of the size of  
3 equipment cabinets, shielding and electronics that will be installed along the plant route, the  
4 power sources that will be used and a description of the noise, exhaust, and pollutants, if any,  
5 that will be generated by the operation of the same;

6 (C) A general description of the construction techniques that the  
7 operator proposes to use in installing the system above-ground and underground, a schedule for  
8 construction of the system that describes where and when construction will begin, how it will  
9 proceed, and when it will be completed, and the expected effect on right-of-way usage, including  
10 information on the ability of the public ways to accommodate the proposed system; and

11 (D) A description, where appropriate, of how services will be  
12 converted from existing facilities to new facilities, and what will be done with existing facilities.

13 (7) Information on the availability of space in conduits including, where  
14 appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

15 (8) A demonstration of how the applicant will reasonably meet the future  
16 cable-related needs and interests of the community, including descriptions of how the applicant  
17 will meet the needs described in any community needs assessment conducted by or for the  
18 County, and how the applicant will provide adequate PEG or other access channel capacity,  
19 facilities, or financial support to meet the community's needs and interests as authorized by 47  
20 U.S.C. § 531, and will provide leased access channels as required by 47 U.S.C. § 532.

21 (9) A demonstration to support the findings required by Virginia Code § 15.2-  
22 2108(B), as amended.

1           (10) A proposed Franchise agreement with supporting analysis that  
2 demonstrates that the terms and conditions of the proposed Franchise agreement are not more  
3 favorable or less burdensome than those in any existing Franchise agreement within the  
4 Franchise area.

5           (11) Any other information that may be reasonably necessary to demonstrate  
6 compliance with the requirements of this Chapter.

7           (12) Any additional information that the County may request of the applicant  
8 that is relevant to the County's consideration of the application.

9           (13) An affidavit or declaration of the applicant or authorized officer certifying  
10 the truth and accuracy of the information in the application.

11           (14) The County may, at its discretion and upon request of an applicant, waive  
12 in writing the provision of any of the information required by this Section.

13           (d) All Franchise applications for a Franchise area or areas described in this Chapter  
14 shall include a map of suitable scale showing all federal, state, and County roads that identifies  
15 the schedule pursuant to which the applicant proposes to construct its Cable system, which shall  
16 be incorporated into a Franchise granted pursuant to this Chapter.

17           (e) An applicant shall not be issued a Franchise if it files materially misleading  
18 information in its application or intentionally withholds material information that the applicant  
19 lawfully is required to provide. In evaluating an application for a Franchise, the County may  
20 consider, but not be limited to, the following factors:

21           (1) The extent to which the applicant has substantially complied with  
22 applicable law and the material terms of any existing cable Franchise for the County;

(2) Whether the quality of the applicant's service under any existing Franchise in the County, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served;

(3) Whether the applicant has the financial, technical, and legal qualifications to provide Cable service;

(4) Whether the application satisfies any minimum requirements established by the County and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;

(5) Whether the applicant will provide adequate PEG or other access channel capacity, facilities, and financial support and leased access; and,

(6) Whether issuance of a Franchise is in the public interest.

**Section 9.1-3-6. Application for grant of renewal Franchise.**

(a) If the provisions of 47 U.S.C. § 546(a)-(g) are properly invoked, the County shall issue a Request for Renewal Proposal ("RFRP") after conducting a proceeding to: (i) review the renewal applicant's past performance; and (ii) identify the County's future cable-related community needs and interests. The County shall establish deadlines and procedures for responding to the RFRP, may seek additional information from the applicant, and shall establish deadlines for the submission of that additional information. Following receipt of the application responding to the RFRP (and such additional information as may be provided in response to requests), the Board shall determine that the Franchise should be renewed or make a preliminary assessment that the Franchise should not be renewed. If the Board makes a preliminary assessment that the Franchise should not be renewed, and the applicant that submitted the renewal application notifies the County, either in its RFRP response or within ten working days

1 of the preliminary assessment, that it wishes to pursue any rights to an administrative proceeding  
2 it has under the Cable Act, then the County shall commence an administrative proceeding after  
3 providing prompt public notice thereof, in accordance with the Cable Act.

4 (b) If an administrative hearing is commenced pursuant to 47 U.S.C. § 546(c), the  
5 applicant's renewal application shall be evaluated pursuant to federal law.

6 (c) If the County decides to grant renewal, it shall prepare a final Franchise  
7 agreement that incorporates, as appropriate, the commitments made by the applicant in the  
8 renewal application. If the applicant accepts the Franchise agreement, the Franchise shall be  
9 renewed. If the Franchise agreement is not accepted within the time limits established by 47  
10 U.S.C. § 546(c)(1), renewal shall be deemed preliminarily denied, and an administrative  
11 proceeding commenced if the applicant that submitted the renewal application requests it within  
12 ten days of the expiration of the time limit established by 47 U.S.C. § 546(c)(1).

13 (d) Notwithstanding the preceding subsections, a cable operator may submit an  
14 application for renewal of a Franchise pursuant to 47 U.S.C. § 546(h). Such a proposal may be  
15 submitted at any time and the Board may, after affording the public adequate notice and  
16 opportunity for comment, grant or deny such proposal at any time. An informal renewal  
17 application may be denied for any reason. If an informal renewal application is granted, then the  
18 steps specified in this Subsection pursuant to 47 U.S.C. § 546(a)-(g) need not be taken.

19 (e) If a renewal of a Franchise is denied, the Board may acquire ownership of the  
20 Cable system or effect a transfer of ownership of the system to another Person. Any such  
21 acquisition or transfer shall be at fair market value of the system as of the expiration date of the  
22 Franchise valued as a going concern but with no value allocated to the Franchise itself.



1           (f)     Misrepresentation or fraud by the applicant shall be grounds for denial of an  
2 application.

3           (g)     The provisions of this Section shall be read and applied so that they are consistent  
4 with 47 U.S.C. §§ 546 and 547.

5 **Section 9.1-3-7. Applicant representatives.**

6           Any Person who files an initial or renewal Franchise application with the County shall  
7 forthwith, at all times, disclose to the County, in writing, the names, addresses and occupations  
8 of all Persons who are authorized to represent or act on behalf of the applicant in those matters  
9 pertaining to the application. The requirement to make the disclosure described in this Section  
10 shall continue until the County has granted or rejected an applicant's application, or until an  
11 applicant withdraws its application.

## ARTICLE 4.

### **Administration and Advisory Bodies to the Board of Supervisors.**

**Section 9.1-4-1. Powers and responsibilities.**

(a) The Board delegates the performance of any act, duty, or obligation, or exercise of any power under this Chapter or any Franchise agreement to the Communications Administrator, except where this Chapter specifies that the Board shall take an action or federal or Virginia law requires action by the Franchising Authority.

(b) Day-to-day administration of cable communications operations and Franchises within the County shall be assigned to the Communications Administrator. The Communications Administrator's powers and responsibilities include, but are not limited to, the following functions:

(1) Preparing invitations to bid for a Franchise; establishing criteria for review and ranking of Franchise applications; reviewing and evaluating applications for Franchises and making selection recommendations to the Board;

(2) Monitoring the timely performance of Grantee(s) in submitting applications for and obtaining all certificates, permits and agreements required by this Chapter and applicable law and the performance of Grantee(s) in meeting applicable construction timetables;

(3) Monitoring and reviewing changes in, additions to, or reductions of Subscriber fees and rates for conformity with the requirements of this Chapter and federal law; advising and making recommendations to the Board on the regulation of rates in accordance with this Chapter; administering and enforcing the rate regulation provisions of the Cable Act and

1 federal law; promulgating rules and procedures concerning rate regulation; and exercising any  
2 authority granted by the Board under this Chapter;

3 (4) Advising and making recommendations to the Board on technical,  
4 engineering, and police power regulations of cable and communications systems within the  
5 County;

6 (5) Cooperating with other cable and communications systems, system  
7 operators and governmental units in the development and supervision of the interconnection of  
8 systems;

9 (6) Reviewing books, records and reports a Grantee is required to provide  
10 pursuant to this Chapter and a Franchise agreement, as well as all franchise reports filed with the  
11 FCC or any other regulatory agencies with jurisdiction over any cable or communications system  
12 in the County, and, at the Communications Administrator's discretion, requiring the preparation  
13 and filing of information in addition to that required by this Chapter or applicable law, as may  
14 reasonably be required to accomplish the purposes of this Chapter;

15 (7) Monitoring a Grantee's performance under and compliance with the terms  
16 of an applicable Franchise agreement and this Chapter and making recommendations to the  
17 Board to ensure such compliance or advising and making recommendations on matters that may  
18 constitute grounds for revoking or shortening the term of a Franchise;

19 (8) Receiving and investigating complaints against a Grantee and advising a  
20 Grantee of the receipt of Subscriber complaints affecting a Grantee's system;

21 (9) Seeking recovery of penalties or liquidated damages provided for in this  
22 Chapter or a Franchise agreement, including but not limited to withdrawing money from a  
23 security fund pursuant to a Franchise agreement;

1           (10) Advising the Board with regard to the County's authority to regulate,  
2 Franchise, or authorize communications systems in the County;

3           (11) Developing policies to encourage growth and competition in  
4 communications, and evaluating the impact of communications systems on the County, for  
5 review and implementation by the Board; and

6           (12) Other duties as assigned by the Board and the County Executive.

7           (c) The Board shall have the sole authority to: (i) regulate rates for rate regulated  
8 services, except to the extent such authority is delegated to the Communications Administrator in  
9 this Chapter; (ii) grant Franchises; (iii) authorize the entering into of Franchise agreements; (iv)  
10 renew Franchises; (v) revoke or shorten the term of a Franchise; (vi) authorize the transfer of a  
11 Franchise; and, (vii) authorize a change of ownership control of a Grantee.

12 **Section 9.1-4-2. Advisory bodies to the Board of Supervisors.**

13           The Consumer Protection Commission (as defined in Chapter 10 of the Code of the  
14 County of Fairfax) may, as directed by the Board or requested by the Communications  
15 Administrator, advise and inform the Board on issues relating to Cable systems.

**ARTICLE 5.****Franchise Conditions.****Section 9.1-5-1. Franchise term.**

The term of an original Franchise shall not exceed fifteen years from the date the Franchise is accepted by a Grantee. The term of a renewed Franchise shall be no more than fifteen years. This provision shall not be construed to prohibit or restrict the extension of an existing Franchise term pending renewal proceedings pursuant to applicable law.

**Section 9.1-5-2. Notice to Grantee.**

The Board shall not grant a renewal, approve a transfer, or revoke a Franchise unless the County has given the Grantee at least thirty days' advance written notice of the initial meeting at which the Board will consider such action. The notice shall advise the Grantee of the time, place and purpose of the meeting. The Board's consideration or decision may be carried over with oral notice to the Grantee.

**Section 9.1-5-3. Franchise modification.**

(a) A Grantee may request a Franchise modification by submitting a written application to the Communications Administrator for any modification of a Franchise agreement requested in accordance with to 47 U.S.C. § 545, that includes: (i) the specific modification requested; (ii) the justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of pro forma financial statements; (iii) a statement indicating that the modification is sought pursuant to 47 U.S.C. § 545, and a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545; (iv) any other information that the applicant believes is necessary for

1 the County to make an informed determination on the application for modification; and, (v) an  
2 affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of  
3 the information.

4 (b) The Board shall consider requests for a Franchise modification upon request by  
5 the County or Grantee. The Franchise modification request shall include a review and  
6 recommendation by the Communications Administrator.

7 **Section 9.1-5-4. Franchise revocation.**

8 (a) The Board shall have the right, by ordinance, to revoke a Franchise or to shorten  
9 the term of a Franchise to a term not less than thirty-six months from the date of the action  
10 shortening the Franchise term, for a Grantee's failure to construct, operate or maintain its Cable  
11 system in accordance with this Chapter and its Franchise agreement; for failing to comply with  
12 the conditions of occupancy for any public lands; for failing to make required extensions of  
13 service; for willfully or knowingly making false statements on or in connection with an initial or  
14 renewal Franchise application; for willfully or knowingly making false statements on or in  
15 connection with any application for a transfer or a Franchise modification; for defrauding or  
16 attempting to defraud the County or Subscribers; for any substantial violation of the Virginia  
17 Consumer Protection Act of 1977; for any substantial violation of the Cable Act or any  
18 regulations promulgated pursuant thereto; or for any other material breach of a Franchise  
19 agreement or violation of this Chapter. Board actions taken pursuant to this Subsection shall be  
20 in accordance with such other terms and conditions to revoke a Franchise or to shorten the term  
21 of a Franchise agreement to the extent established in that Grantee's Franchise agreement.

22 (b) A Grantee shall not be subject to the sanctions of this Section for any act or  
23 omission wherein such act or omission was beyond the Grantee's control. An act or omission

1 shall not be deemed to be beyond a Grantee's control if committed, omitted, or caused by a  
2 corporation or other business entity that holds a controlling interest in the Grantee, whether held  
3 directly or indirectly. Further, the inability of a Grantee to obtain financing, for whatever reason,  
4 shall not be an act or omission that is "beyond the Grantee's control."

5 (c) Any Franchise shall be deemed revoked one hundred twenty calendar days after  
6 an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over  
7 the business of a Grantee, whether in a receivership, reorganization, bankruptcy, assignment for  
8 the benefit of creditors, or other action or proceeding. Provided, however, that a Franchise may  
9 be reinstated at the Board's sole discretion if, within that one hundred twenty day period:

10 (1) Such assignment, receivership or trusteeship has been vacated; or

11 (2) Such assignee, receiver, or trustee has fully complied with the terms and  
12 conditions of this Chapter and the applicable Franchise agreement and has executed an  
13 agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to  
14 be bound by the terms and conditions of this Chapter and the applicable Franchise agreement,  
15 and such other conditions as may be established or as are required by applicable law.

16 (d) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of  
17 any of the facilities, equipment, or property of a Grantee, the Board may revoke the Franchise by  
18 serving notice on the Grantee and the successful bidder, in which event the Franchise and all  
19 rights and privileges of the Franchise will be revoked and will terminate thirty calendar days  
20 after serving such notice, unless:

21 (1) The Board has approved the transfer of the Franchise to the successful  
22 bidder; and

1           (2)     The successful bidder has covenanted and agreed with the Board to  
2     assume and be bound by the terms and conditions of the Franchise agreement and this Chapter,  
3     and such other conditions as may be established or as are required pursuant to this Chapter or a  
4     Franchise agreement.

5           (e)     If the Board revokes a Franchise, or if for any reason a Grantee terminates or fails  
6     to provide service to its Subscribers, or abandons, forfeits or fails to operate its system, the  
7     following rights are effective:

8           (1)     the Board may acquire ownership of or effect a transfer of the Cable  
9     system at an equitable price; and

10          (2)     if a Cable system is abandoned by a Grantee, the Board may sell, assign or  
11     transfer all or part of the assets of the system.

12          (f)     The Board may acquire ownership of and operate a Cable system, regardless of  
13     whether such ownership is acquired following revocation or forfeiture of a Franchise.

14          (g)     The termination of a Grantee's Franchise shall in no way affect, limit or foreclose  
15     any rights or remedies the County may have under the Franchise or under any provision of law.

16     **Section 9.1-5-5. Transfer of ownership to County; Arbitration.**

17          (a)     In those circumstances provided for in this Chapter wherein the County shall have  
18     the right to acquire ownership of a Grantee's Cable system or substantially all of its assets, and  
19     the price for the Cable system shall have been mutually agreed upon, within sixty days after such  
20     agreement, the County shall give written notice to the Grantee if it elects to exercise such right.  
21     The County's written notice shall indicate whether the entire system or substantially all of its  
22     assets will be purchased. Ownership of the system or the identified assets will transfer to the



County at the time the County tenders the purchase price for the system or assets, which shall not be later than 180 days after the County's notice of its exercise of a right of purchase.

(b) In the event the Board considers the purchase or transfer of a Grantee's Cable system, or any of its assets, pursuant to the terms of a Franchise agreement and/or this Chapter, and the final price cannot be agreed upon, the price shall be determined by a panel of arbitrators. The panel shall be composed of one arbitrator chosen by the County, one arbitrator chosen by the Grantee, and a third arbitrator chosen by the first two. The expenses of the arbitration, including the fees of the arbitrators, shall be borne by the parties in such a manner as the arbitrators provide in their award, but in no event will the County be responsible for more than one-half of the expenses. The arbitrators shall follow the rules and procedures of the American Arbitration Association, except where such procedures conflict with an express provision of this Chapter. The arbitration hearing shall take place in Fairfax County, Virginia, unless otherwise agreed to by the parties in writing.

(c) Where the purchase price of a Cable system has been submitted to arbitration, the County may affirmatively accept the price determined by the arbitrators within sixty days after the rendering of the arbitrators' decision, and make payment of such price in full to the Grantee within 180 days after the rendering of the arbitrators' price, at which time the system or any assets shall automatically transfer to the County. If the County fails to accept the arbitrators' price within the aforesaid sixty-day period, and tender the purchase price in full to the Grantee within 180 days after the rendering of the arbitrators' price, the rights of the County to acquire shall expire.

(d) No matter or dispute between the County and a Grantee relating to this Chapter or a Franchise agreement shall be arbitrable unless specifically provided for in this Chapter or a Franchise agreement.

**Section 9.1-5-6. County's right to assign.**

A Franchise agreement shall not limit the right of the County to assign its rights to acquire any or all of the assets of a Grantee's Cable system.

**Section 9.1-5-7. Continuity of service.**

(a) A Grantee shall operate its Cable system pursuant to this Chapter and its Franchise agreement without interruption, except as otherwise provided by this Chapter or its Franchise agreement. Following the expiration or revocation of its Franchise, a Grantee shall, at the County's request, as trustee for its successor in interest, operate its Cable system for a temporary period (the "Transition Period") as necessary to maintain service to Subscribers, and shall cooperate with the County to assure an orderly transition from it to the County or another Franchise holder.

(b) During the Transition Period, a Grantee shall not sell any of its Cable system assets, nor make any physical, material, administrative or operational change that would tend to degrade the quality of service to Subscribers, decrease Gross Revenues, or materially increase expenses without the express permission, in writing, of the County or its assigns.

(c) The County may seek legal and/or equitable relief to enforce the provisions of this Section.

(d) The Transition Period shall be no longer than the reasonable period required to arrange for an orderly transfer of the Cable system to the County or to another Franchise holder, unless mutually agreed to by a Grantee and the County. During the Transition Period, a Grantee will continue to be obligated to comply with the terms and conditions of this Chapter, its Franchise agreement, and applicable laws and regulations.

(e) If a Grantee abandons its Cable system during the Franchise term, or fails to

1 operate its Cable system in accordance with the terms of this Chapter and its Franchise  
2 agreement during any Transition Period, the County, at its option, may operate a Grantee's Cable  
3 system, designate another entity to operate the Grantee's Cable system temporarily until the  
4 Grantee restores service under conditions acceptable to the County or until a Grantee's Franchise  
5 agreement is revoked and a new Grantee selected by the County is providing service, or obtain  
6 an injunction requiring a Grantee to continue operations.

7 (f) For its management services during the Transition Period, the Grantee shall be  
8 entitled to receive as compensation the "Net Income" generated during the Transition Period.  
9 For the purposes of this Subsection, "Net Income" means the amount remaining after deducting  
10 from Gross revenues all of the actual, direct and indirect, expenses associated with operating the  
11 Grantee's Cable system, including the Franchise Fee, interest, depreciation and all taxes, all as  
12 determined in accordance with generally accepted accounting principles.

13 **Section 9.1-5-8. Franchise fee.**

14 (a) Every Grantee shall pay a franchise fee of five percent of Gross revenues, as  
15 provided in federal law and consistent with Virginia law.

16 (b) Each year during a Franchise term, as compensation for use of Public Rights-of-  
17 Way and public land, a Grantee shall pay to the County, on a quarterly basis, a franchise fee.  
18 The payments shall be made no later than thirty days following the end of each quarter.

19 (c) Each franchise fee payment shall be submitted with supporting detail and a  
20 statement certified by a Grantee's chief financial officer or an independent certified public  
21 accountant, reflecting the total amount of monthly Gross revenues for the payment period. The  
22 County shall have the right to reasonably require further supporting information.

23 (d) The County shall have the right to inspect books and records and to audit and

1 recompute any amounts determined to be payable under this Chapter or a Franchise agreement,  
2 whether the records are held by a Grantee, an Affiliate, or any other agent of a Grantee.

3 (e) A Grantee shall be responsible for making available to the County all records  
4 necessary to confirm the accurate payment of franchise fees, without regard to by whom they are  
5 held. Such records shall be made available pursuant to the requirements of this Chapter.

6 (f) The County's audit expenses shall be borne by the County unless the audit  
7 discloses an underpayment of more than three percent of any quarterly payment, in which case  
8 the County's out-of-pocket costs of the audit shall be borne by a Grantee as a cost incidental to  
9 the enforcement of its Franchise. Any additional undisputed amounts due to the County as a  
10 result of the audit shall be paid within thirty days following written notice to a Grantee by the  
11 County of the underpayment, which notice shall include a copy of the audit report. If  
12 recomputation results in additional revenue to be paid to the County, interest will be due as  
13 specified in this Section.

14 (g) The County shall have three years from the time a Grantee delivers a franchise fee  
15 payment to question that payment, and if the County fails to question the payment within that  
16 time period, the Grantee shall not be liable for adjustment to that payment. If the County gives  
17 written notice to a Grantee within that three-year period, the three-year period shall be tolled for  
18 one year to allow the County to conduct an audit. Any legal action by either party relating to a  
19 franchise fee payment will toll the remaining term, if any, of the three-year time period and the  
20 one-year audit period with respect to that payment.

21 (h) The franchise fee payments required by this section shall be in addition to any and  
22 all taxes of a general nature or other fees or charges which a Grantee shall be required to pay to  
23 the County or to any state or federal agency or authority, as required herein or by law, all of

1 which shall be separate and distinct obligations of a Grantee. A Grantee shall not have or make  
2 any claim for any deduction or other credit of all or any part of the amount of the franchise fee  
3 payments from or against any of said County taxes or other fees or charges which a Grantee is  
4 required to pay to the County, except as required by law, this Chapter, or a Franchise agreement.  
5 A Grantee shall not apply nor seek to apply all or any part of the amount of the franchise fee  
6 payments as a deduction or other credit from or against any of said County taxes or other fees or  
7 charges, each of which shall be deemed to be separate and distinct obligations of a Grantee. Nor  
8 shall a Grantee apply or seek to apply all or any part of the amount of any of said taxes or other  
9 fees or charges as a deduction or other credit from or against any of its Franchise obligations,  
10 each of which shall be deemed to be separate and distinct obligations of a Grantee.  
11 Notwithstanding the above provisions of this paragraph, however, a Grantee shall have the right  
12 to a credit, in the amount of its franchise fee payments under its Franchise agreement, against  
13 any general utility tax on Cable services that may be imposed by the County, to the extent such a  
14 tax is applicable to a Grantee or its Subscribers. A Grantee shall not designate or characterize its  
15 franchise fee as a tax.

16 (i) In the event that any franchise fee payment or recomputation amount less than  
17 Five Thousand Dollars is not made on or before the required date, interest shall be charged from  
18 the due date at an annual rate equal to the commercial prime interest rate of the County's primary  
19 depository bank during the period the unpaid amount is due. In the event that any franchise fee  
20 payment (or payments) or any recomputation amount totaling Five Thousand Dollars or more is  
21 not paid by the due date, then interest shall accrue to the County from the due date at a rate equal  
22 to the interest rate then chargeable for unpaid federal income taxes (26 U.S.C. § 6621). In  
23 addition to the foregoing, the failure of a Grantee to make a timely payment (as defined by Va.

Code § 6.1-330.80) of any amount required or recomputed under this Section shall subject a Grantee to an additional late charge of five percent of the amount of such payment. However, for good cause shown, the Communications Administrator may waive the provisions of this Subsection for a period not to exceed five business days.

(j) In the event a Franchise is revoked prior to its expiration date, a Grantee shall file with the County, within ninety days of the date of revocation, a financial statement certified by an independent certified public accountant that clearly shows the Gross revenues received by a Grantee from the end of the previous fiscal quarter through the date of revocation and shall pay within that time the franchise fees accrued as of the date of revocation.

(k) The acceptance of any payment required herein by the County shall not be construed as an acknowledgment or an accord and satisfaction that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release or waiver of any claim that the County may have for additional sums due and payable. However, the County's acceptance of full payment of the amount determined to be due by the County through an audit shall be construed as an accord and satisfaction.

**Section 9.1-5-9. Insurance—Bonds—Indemnity.**

(a) A Grantee shall maintain, and by its acceptance of a Franchise specifically agrees that it will maintain, throughout the entire length of a Franchise period, at least the following liability insurance coverage insuring the County and a Grantee: (i) commercial general liability insurance with respect to the construction, operation, and maintenance a Grantee's Cable system, and the conduct of a Grantee's business in the County, in the minimum amounts of \$2,000,000 per occurrence; \$2,000,000 aggregate for each occurrence; and (ii) copyright infringement insurance in the minimum amount of \$2,000,000 for copyright infringement occasioned by the

1 operation of a Grantee's Cable system.

2 (b) Such commercial general liability insurance must include coverage for all of the  
3 following: comprehensive form, premises-operations, explosion and collapse hazard,  
4 underground hazard, products/completed operations hazard, contractual insurance, broad form  
5 property damage, and personal injury.

6 (c) The County may review these amounts and shall have the right to require  
7 reasonable adjustments to them consistent with the public interest.

8 (d) A Grantee shall be solely responsible for the payment of premiums due for each  
9 policy of insurance required pursuant to this Chapter and its Franchise agreement.

10 (e) All insurance policies and certificates maintained pursuant to this Chapter or a  
11 Franchise agreement shall contain the following endorsement:

12 It is hereby understood and agreed that this insurance coverage may not be  
13 canceled by the insurance company nor the intention not to renew be stated by the  
14 insurance company until at least 30 days after receipt by the County  
15 Communications Administrator, by registered mail, of a written notice of such  
16 intention to cancel or not to renew.

17 (f) All insurance policies shall be with insurers qualified to do business in the  
18 Commonwealth of Virginia, with an A-1 or better rating of insurance by Best's Key Rating  
19 Guide, Property/Casualty Edition.

20 (g) All insurance policies shall be available for review by the County, and a Grantee  
21 shall submit to the County certificates of insurance for each policy required herein.

1           (h) All commercial general liability insurance policies shall name the County, its  
2   elected and appointed officials, officers, boards, commissions, commissioners, agents, and  
3   employees as additional insureds.

4           (i) A Grantee shall, at its sole cost and expense, indemnify, hold harmless, and  
5   defend the County, its elected and appointed officials, officers, boards, commissions,  
6   commissioners, agents, and employees, against any and all claims, suits, causes of action,  
7   proceedings, and judgments for damages or equitable relief arising out of the construction,  
8   maintenance, or operation of a Grantee's Cable system (to the extent that a Grantee has operation  
9   or maintenance responsibilities pursuant to this Chapter, its Franchise agreement, or applicable  
10   law); copyright infringements or a failure by a Grantee to secure consents from the owners,  
11   authorized distributors, or franchisees of programs to be delivered by a Grantee's Cable system  
12   (other than PEG content); the conduct of a Grantee's business in the County; or in any way  
13   arising out of a Grantee's enjoyment or exercise of its Franchise agreement, unless that specific  
14   act or omission has been authorized by the County or is the result of any act or omission by the  
15   County or its elected and appointed officers, boards, commissions, commissioners, agents, or  
16   employees which results in personal injury or property damage. A general statement of  
17   authorization pursuant to this Chapter or a Franchise agreement shall not be construed to be such  
18   an authorization.

19          (j) Specifically, a Grantee shall fully indemnify, defend, and hold harmless the  
20   County and, in their capacity as such, the elected and appointed officials, officers, agents,  
21   commissions, commissioners, boards and employees thereof, from and against any and all  
22   claims, suits, actions, liability, and judgments, whether for damages or otherwise, subject to 47  
23   U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or



1 maintenance of a Grantee's Cable system, including but not limited to any claim against a  
2 Grantee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the  
3 violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of  
4 any other right of any Person, firm, or corporation. This indemnity does not apply to  
5 programming carried on any Channel set aside for PEG use, or Channels leased pursuant to 47  
6 U.S.C. § 532, or to operations of the PEG Channels to the extent such operations are carried out  
7 by a Person other than a Grantee or its agents.

8 (k) In the event that a Grantee fails, after notice, to undertake the County's defense of  
9 any claims pursuant to this Section, a Grantee's indemnification shall include, but is not limited  
10 to, the County's reasonable attorneys' fees incurred in defending against any such action, claim,  
11 suit, or proceeding, any interest charges arising from any action, claim, suit or proceeding arising  
12 under this Chapter or its Franchise agreement, the County's out-of-pocket expenses, and the  
13 reasonable value of any services rendered by the County.

14 (l) In addition to the other insurance policies required by this Chapter, a Grantee  
15 shall obtain and keep in force and effect during the entire term of its Franchise agreement,  
16 including any extension thereof, commercial general liability insurance coverage (owner's  
17 protection policy) in a minimum amount of two million dollars covering bodily injury and  
18 property damage, subject to exclusions, for the benefit of the County, its elected and appointed  
19 officials, boards, commissions, commissioners, agents, employees, and officers. A Grantee  
20 shall deliver to the County on or before the date of execution of a Franchise agreement an  
21 indemnification insurance policy duly executed by the officers or authorized representatives of a  
22 responsible and non-assessable insurance company, evidencing this coverage for the benefit of  
23 the County, its elected and appointed officials, agents, boards, commissions, commissioners,

1 employees, and officers, which policy of insurance shall provide for at least 30 days' prior  
2 written notice to the County of the insurer's intention to cancel or not to renew said policy.

3 (m) Neither the provisions of this Section nor any damages recovered by the County  
4 shall be construed to limit the liability of a Grantee or its subcontractors for damages under this  
5 Chapter or its Franchise agreement or to excuse the faithful performance of obligations required  
6 by this Chapter and its Franchise agreement, except to the extent that any monetary damages  
7 suffered by the County have been satisfied by a financial recovery under this Section or other  
8 provisions of this Chapter or Franchise agreement.

9 (n) The County shall at no time be liable for any injury or damage occurring to any  
10 Person or property from any acts or omissions of a Grantee in the construction, maintenance, use,  
11 operation or condition of a Grantee's Cable system, to the extent that a Grantee has  
12 responsibilities for such maintenance, use, operation or condition pursuant to this Chapter, its  
13 Franchise agreement, or applicable law. The County shall not and does not assume any liability  
14 whatsoever of a Grantee for injury to Persons or damage to property.

15 (o) The provisions of this Section constitute the minimum requirements of a Grantee  
16 under this Chapter and its Franchise agreement, but shall not be additional requirements to those  
17 identified in a Grantee's Franchise agreement.

18 (p) A Grantee shall obtain and maintain during the entire term of a Franchise, and any  
19 renewal or extensions thereof, a performance bond in the County's favor in the amount not less  
20 than \$500,000 to ensure a Grantee's faithful performance of its obligations under its Franchise  
21 agreement, this Chapter, and other applicable law. The County may, at its sole discretion, reduce  
22 the amount of the bond upon written application by a Grantee. Reductions granted or denied  
23 upon application by a Grantee shall be without prejudice to the Grantee's subsequent

1 applications or to the County's right to require the full bond at any time thereafter. However, no  
2 application for a reduction of bond shall be submitted by a Grantee within one year of any prior  
3 application. In no event shall such performance bond or bonds be reduced to less than Fifty  
4 Thousand Dollars.

5 (q) A performance bond shall provide the following conditions:

6 (1) There shall be recoverable by the County from the principal and surety,  
7 any and all fines and penalties due to the County and any and all damages, losses, costs, and  
8 expenses suffered or incurred by the County resulting from the failure of a Grantee to faithfully  
9 comply with the material provisions of a Franchise agreement, this Chapter, and other applicable  
10 law, to comply with all orders, permits and directives of any County agency or body having  
11 jurisdiction over a Grantee's acts or defaults, to pay fees due to the County, or to pay any claims,  
12 taxes or liens due the County. Such losses, costs and expenses shall include, but not be limited  
13 to, reasonable attorney's fees and other associated expenses.

14 (2) The total amount of the performance bond required by this Chapter shall  
15 be forfeited in favor of the County in the event:

16 (A) a Grantee abandons its system at any time during the term of its  
17 Franchise or any extension thereto; or

18 (B) a Grantee carries out a transfer without the express written  
19 approval of the Board as required in this Chapter.

20 (r) All performance bonds shall be issued by a surety with an A-1 or better rating of  
21 insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval  
22 of the County; and shall contain the following endorsement:

1           This bond may not be allowed to lapse until at least ninety days after receipt by  
2           the County, by certified mail, return receipt requested, of a written notice from the  
3           issuer of the bond of intent not to renew.

4  
5           (s)     All performance bonds and insurance policies required herein shall be in a form  
6           satisfactory to the County. The County may, at any time, increase the amount of the required  
7           performance bond to reflect increased risks to the County and the public and/or require a Grantee  
8           to provide additional sureties to any and all bonds or to replace existing bonds with new bonds  
9           that satisfy the criteria in this Section. No bond or insurance policy shall be cancelable.  
10          Insurance policies written for a period less than the term of a Franchise shall be renewed at least  
11          thirty days before the policy's expiration, and the renewed policies and evidence of premium  
12          payments shall be promptly delivered to the County.

13          (t)     No Grantee shall permit any insurance policy or performance bond to expire or  
14          approach less than thirty days prior to expiration without securing and delivering to the County a  
15          substitute, renewal or replacement policy or bond in conformance with the provisions of this  
16          Chapter.

17          (u)     The County may require performance bonds and insurance policies described in  
18          this Section to run to the benefit of the County.

19          **Section 9.1-5-10. Transfer of Franchise.**

20          (a)     A Franchise is a privilege that is in the public trust and personal to a Grantee. A  
21          Grantee's obligations under its Franchise involve personal services, the performance of which  
22          involves personal credit, trust, and confidence in the Grantee.

1           (b)     No transfer shall occur without prior written notice to and approval of the Board.  
2     For purposes of this Section, written approval shall be expressed by ordinance. A transfer  
3     without the prior written approval of the Board shall be considered to impair the County's  
4     assurance of due performance. The granting of approval for a transfer in one instance shall not  
5     render unnecessary approval of any subsequent transfer.

6           (c)     A Grantee shall promptly notify the County of any proposed transfer. If any  
7     transfer takes place without prior notice to the County, the Grantee shall promptly notify the  
8     County that the transfer has occurred.

9           (d)     At least one hundred twenty calendar days prior to the contemplated effective date  
10    of a transfer, a Grantee shall submit to the County an application for approval of a transfer. The  
11    application shall provide complete information on the proposed transaction, including details on  
12    the legal, financial, technical, and other qualifications of the transferee. At a minimum, the  
13    following information must be included in the application:

- 14                   (1)     all information and forms required under federal law;  
15                   (2)     any shareholder reports or filings with the Securities and Exchange  
16    Commission that pertain to the transaction;  
17                   (3)     other information necessary to provide a complete and accurate  
18    understanding of the financial position of the Cable system before and after the proposed  
19    transfer;  
20                   (4)     complete information regarding any potential impact of the transfer on  
21    Subscriber rates and service; and

1           (5)     any contracts or other documents that relate to the proposed transaction,  
2     and all documents, schedules, exhibits, or information referred to therein as the County may  
3     request.

4           (e)     To the extent consistent with federal law, the County may waive in writing any  
5     requirement that information be submitted as part of the transfer application, without thereby  
6     waiving any rights the County may have to request such information after the application is filed.

7           (f)     For the purposes of determining whether the Board should consent to a transfer,  
8     the County or its agents may inquire into all qualifications of the prospective transferee and such  
9     other matters as the County may deem necessary to determine whether the transfer is in the  
10    public interest and should be approved, denied, or conditioned as provided under subsection (g).

11    A Grantee and any prospective transferees shall assist the County in any such inquiry, and if they  
12    fail to do so, the request for a transfer may be denied.

13          (g)     In making a determination as to whether to grant, deny, or grant subject to  
14    conditions, an application for a transfer of a Franchise, the Board may consider, by way of  
15    example and not limitation, the legal, financial, and technical qualifications of the transferee to  
16    operate the Cable system; any potential impact of the transfer on Subscriber rates or services;  
17    whether a Grantee is in compliance with its Franchise agreement and this Chapter and, if not, the  
18    proposed transferee's commitment to cure such noncompliance; whether the transferee owns or  
19    controls any other Cable system in the County, and whether operation by the transferee may  
20    eliminate or reduce competition in the delivery of Cable service in the County; and whether  
21    operation by the transferee or approval of the transfer would adversely affect Subscribers, the  
22    public, or the County's interest under this Chapter, a Franchise, or other applicable law. The  
23    Board shall not withhold its consent unreasonably.

(h) Any Franchise transfer without the Board's prior written approval shall be ineffective, shall make the Franchise subject to revocation at the County's sole discretion, and shall subject the Grantee and/or transferee to any other remedies available under a Franchise agreement, this Chapter or other applicable law.

(i) No application for a transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Chapter and the Franchise agreement and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Grantee(s) under this Chapter and the Franchise agreement, for all purposes, including renewal, unless the County, in its sole discretion, expressly waives this requirement in whole or in part.

(j) Approval by the Board of a transfer shall not constitute a waiver or release of any of the rights of the County under this Chapter and a Franchise agreement, whether arising before or after the date of the transfer.

(k) For the purposes of this Section, a transfer means any assignment of a Franchise that requires FCC Form 394 or equivalent.

**Section 9.1-5-11. Change in ownership control of a Franchise.**

Approval by an action of the Board shall be required for any transfer of control that requires FCC Form 394 or equivalent. By its acceptance of a Franchise agreement a Grantee shall specifically grant and agree that any such transfer of control without approval of the Board constitutes a violation of this Chapter and its Franchise.

**Section 9.1-5-12. Termination of Franchise.**

Upon termination of a Franchise, whether by action of the Board as provided above, or upon expiration of a Franchise term without extension or renewal, a Grantee shall be obligated to

- 1    cease using its system for the purposes authorized by the Franchise unless the Board requires the
- 2    Grantee to operate its system pursuant to [Section 9.1-5-7](#).



**ARTICLE 6.****Rate Regulation; Books and Records; Reports.****Section 9.1-6-1. Regulation of rates.**

(a) To the extent allowed by law, the Board shall regulate Subscriber rates and charges for Rate regulated services. Except as otherwise provided herein, all rates and charges for Rate regulated services shall be approved by the Board. In establishing such rates and charges, the Board shall comply with the rate regulatory rules and procedures adopted by the Federal Communications Commission pursuant to 47 U.S.C. § 543(b). Provided, however, proposals for automatic adjustments that are in compliance with 47 C.F.R. §§ 76.922 and 76.923 may be implemented after review and approval by the Communications Administrator.

(b) All charges to Subscribers shall be consistent with a schedule of rates and charges for all services offered by a Grantee. Except as otherwise provided by the Board, any increase in the schedule of rates and charges shall not take effect until at least sixty days after approval. In addition, no increase in rates or charges shall be implemented unless each Subscriber subject to the increase in rates and charges has been notified of the change at least sixty days in advance of the change. In lieu of a Grantee providing sixty days written notice to each Subscriber subject to the increase, notification may be cablecast to Subscribers by a Grantee in a manner approved by the Communications Administrator, but in the event a cablecast notice is provided to Subscribers, a Grantee also shall give each Subscriber subject to the increase written notice of the increase no less than thirty days before the increase is implemented. In addition, the Grantee shall provide oral or written notification of any pending increases to rates and charges to any Person who requests Cable service or becomes a Subscriber after any approval of increases to rates and charges but before the rate increase becomes effective.

1 (c) A Grantee shall notify in writing each Subscriber of all applicable fees and  
2 charges for providing Cable service prior to executing a contract of service with such Subscriber  
3 or installing any equipment to serve such Subscriber.

4 (d) Except as may be otherwise provided in a Franchise agreement, a Subscriber shall  
5 have the right to have Cable service terminated without charge. A Subscriber shall not be  
6 charged for Cable service for more than two business days following the Subscriber's notice of  
7 termination to the Grantee. No Grantee shall enter into any agreement with a Subscriber which  
8 imposes any charge following disconnection of service, except for reconnection and subsequent  
9 monthly or periodic charges, and those charges shall be no greater than charges for new  
10 customers.

11 (e) A Grantee shall, at least thirty days prior to the date it intends to terminate service  
12 to any Subscriber for reason(s) of nonpayment of Subscriber fees, notify the Subscriber in  
13 writing of such intention, the reason therefor and the date termination is to be effective.

14 **Section 9.1-6-2. Books and records.**

15 (a) Subject to applicable law, the County shall have the right to inspect and copy at  
16 any time during normal business hours at a Grantee's office, or at another mutually agreed  
17 location, all books and records, including all documents in whatever form maintained, including  
18 electronic media ("books and records") to the extent that such books and records relate to a  
19 Grantee's Cable system or to a Grantee's provision of Cable service. To the extent permitted by  
20 law, the County shall take reasonable steps to protect the proprietary and confidential nature of  
21 any such documents to the extent they are designated as such by a Grantee. The County shall  
22 have the right to copy any such books and records, except to the extent that such books and  
23 records are proprietary and/or confidential pursuant to the Virginia Uniform Trade Secrets Act or

1 other applicable law.

2 (b) A Grantee shall keep complete and accurate books of account and records of its  
3 business and operations under and in connection with its Franchise agreement.

4 (c) Unless otherwise provided in this Chapter, all materials and information specified  
5 in this Chapter shall be maintained for a period of three years or until the Franchise expires,  
6 which ever is longer.

7 (d) A Grantee shall at all times maintain:

8 (1) Complete and accurate books of account and records of its business and  
9 operations under and in connection with this Chapter and a Franchise agreement. At a minimum,  
10 a Grantee's financial books and records shall be maintained in accordance with generally  
11 accepted accounting principles, and shall identify:

12 (A) gross revenues, by service category;

13 (B) operating expenses, categorized by general and administrative  
14 expenses, technical expenses, programming expenses, and overhead, if any;

15 (C) capital expenditures, including capitalized interest and overhead, if  
16 any; and

17 (D) depreciation expenses, by category.

18 (2) Records of all written complaints received. The term "complaints" as used  
19 herein and throughout this Chapter refers to complaints about any aspect of the Cable system or a  
20 Grantee's operations, including, without limitation, complaints about employee courtesy.  
21 Complaints recorded may not be limited to complaints requiring an employee service call.

1           (3)     A full and complete set of plans, records, and "as built" maps showing the  
2     exact location of all system equipment installed or in use in the County, exclusive of Subscriber  
3     service drops.

4           (4)     Records of outages, indicating date, estimated duration, estimated area,  
5     and the estimated number of Subscribers affected, type of outage, and cause.

6           (5)     Records of service calls for repair and maintenance indicating the date and  
7     time service was requested, the date of acknowledgment and date and time service was  
8     scheduled (if it was scheduled), and the date and time service was provided, and (if different) the  
9     date and time the problem was solved.

10          (6)     Records of installation/reconnection and requests for service extension,  
11     indicating date of request, date of acknowledgment, and the date and time service was extended.

12          (7)     A general plan and schedule for construction of its Cable system available  
13     to the public upon request.

14          (e)     The County may require additional information, records, and documents from  
15     time to time.

16          (f)     A Grantee shall maintain a file of records open to public inspection in accordance  
17     with applicable FCC rules and regulations.

18          (g)     Each Grantee shall maintain accurate maps and improvement plans which show  
19     the location, size and a general description of all facilities installed in the public ways and any  
20     power supply sources, including voltages and connections. Maps shall be based on post-  
21     construction inspection to verify location. Each Grantee shall provide a map to the County  
22     showing the location of its facilities, in such detail and scale as may be directed by the  
23     Communications Administrator. New maps shall be promptly submitted to the County when a

1 Cable system expands or is relocated. Copies of maps shall be provided in hardcopy and in any  
2 CAD or other electronic format used by a Grantee.

3 (h) Each Grantee shall take all reasonable steps required to ensure that it is able to  
4 provide the County with all information that must be provided or may be requested under this  
5 Chapter, a Franchise agreement or applicable law, including the issuance of appropriate  
6 subscriber privacy notices. Each Grantee shall be responsible for redacting any data that  
7 applicable law prevents it from providing to the County. Nothing in this Section shall be read to  
8 require a Grantee to violate federal or state law protecting subscriber privacy.

9 (i) If any books, records, maps, plans, or other requested documents are too  
10 voluminous, or for security reasons cannot be copied and moved, then a Grantee may request  
11 that the inspection take place at a location mutually agreed to by the County and the Grantee,  
12 provided that (i) the Grantee must make necessary arrangements for copying documents selected  
13 by the County after its review; and (ii) the Grantee must pay all travel and additional copying  
14 expenses incurred by the County (above those that would have been incurred had the documents  
15 been produced in the County) in inspecting those documents or having those documents  
16 inspected by its designee.

17 (j) The County shall take reasonable steps to protect the proprietary and confidential  
18 nature of any books, records, maps, plans, or other County-requested documents that are  
19 provided pursuant to this Chapter or a Franchise agreement to the extent they are designated as  
20 such by a Grantee.

21 (k) The Communications Administrator may, for good cause shown, waive the  
22 reporting provisions in this Section.

23 **Section 9.1-6-3. Communications with regulatory agencies; Reports.**

1           (a)     A Grantee shall file with the County a copy of communications with regulatory  
2 agencies, as follows:

3                   (1)     any document (other than routine, publicly available agency mailings or  
4 publications) the Grantee files with or receives from the FCC, the United States Securities and  
5 Exchange Commission, or the Virginia State Corporation Commission, or any successor agency  
6 of any of these agencies, that relates to its Cable system and/or the provision of Cable services  
7 under this Chapter or its Franchise agreement, within five working days of such filing or receipt;

8                   (2)     any document a Grantee files with or receives from other agencies, upon  
9 the County's request;

10                  (3)     any document that any parent of a Grantee files with or receives from any  
11 agency that directly and materially relates to a Grantee's Cable system and/or the provision of  
12 Cable services under this Chapter or its Franchise agreement, within five working days of such  
13 filing or receipt.

14                  (4)     For purposes of this Subsection, documents filed by a Grantee or a parent  
15 shall include all documents filed by or on behalf of a Grantee or its parent, but shall not include  
16 documents filed by trade associations to which a Grantee or its parent belong unless a Grantee or  
17 a parent has authorized the use of its name by such trade association among the filing parties and  
18 its name is used.

19           (b)     To the extent that such documents contain, to the satisfaction of the  
20 Communications Administrator, the information required by other reports hereunder, the  
21 Communications Administrator may suspend the requirement to file such other reports with the  
22 County so as to avoid duplication and the administrative costs attendant thereto.

23           (c)     Unless this requirement is waived in whole or in part by the County, a Grantee

1 shall submit a written report to the County no later than April 30<sup>th</sup> of each year during the term of  
2 its Franchise agreement, in a form reasonably satisfactory to the County, which shall include:

3 (1) a summary of the previous calendar year's activities in development of a  
4 Grantee's Cable system, including but not limited to descriptions of services begun or dropped;

5 (2) a summary of complaints, identifying both the number and nature of the  
6 complaints received and an explanation of their dispositions, as such records are kept by a  
7 Grantee. Where a Grantee has identified recurrent Cable system problems, the nature of any  
8 such problems and the corrective measures taken or to be taken shall be identified;

9 (3) A copy of a Grantee's rules, regulations and policies available to  
10 Subscribers of a Grantee's Cable system, including but not limited to (i) all Subscriber rates, fees  
11 and charges, including promotional offers made to potential or current Subscribers; (ii) copies of  
12 a Grantee's contract or application forms for Cable services; and (iii) a detailed summary of a  
13 Grantee's policies concerning the processing of Subscriber complaints; delinquent Subscriber  
14 disconnect and reconnect procedures; A/B switches; Subscriber privacy; and any other terms and  
15 conditions adopted by a Grantee in connection with the provision of Cable service to  
16 Subscribers;

17 (4) An annual financial report for the previous calendar or fiscal year,  
18 certified by a Grantee's chief financial officer or, upon ninety days notice by the County, an  
19 independent certified public accountant, including a year-end balance sheet; an income statement  
20 showing Subscriber revenue and every material category of non-Subscriber revenue, operating  
21 expenses by category, depreciation expenses, interest expenses, taxes paid and a statement of  
22 sources and applications of funds;

23 (5) A current statement of costs of construction by component categories;

1                   (6)     A projected income statement, balance sheet, statement of sources and  
2 applications of funds and statement of projected construction for the next two years;

3                   (7)     A reconciliation between previously projected construction and/or  
4 financial estimates, as the case may be, and actual results;

5                   (8)     A list of Persons, including all entities controlling such Persons, holding  
6 five percent or more of the voting stock or interests of Grantee, or its parents or partners, or  
7 Grantee's subsidiaries, if any;

8                   (9)     A list of officers and members of the Board of Directors of a Grantee and  
9 its parents or partners and Grantee's subsidiaries, if any, or similar officers if a Grantee is not a  
10 corporation; and

11                  (10)    A copy of any annual reports issued by Grantee, its parents or partners and  
12 subsidiaries.

13           (d)     Unless this requirement is waived in whole or in part by the County, no later than  
14 thirty days after the end of each calendar quarter during the term of its Franchise agreement, a  
15 Grantee shall submit a written report to the County, in a form reasonably satisfactory to the  
16 County, which shall include:

17                   (1)     A report showing the number of service calls received by type during that  
18 quarter, including any property damage to the extent such information is available to a Grantee,  
19 and any line extension requests received during that quarter;

20                   (2)     A report showing the number of outages for that quarter, and identifying  
21 separately each planned outage of one or more nodes for more than one hour at a time, the time it  
22 occurred, its duration, the tax map area and, when available to a Grantee, the number of homes  
23 affected; and, when a Grantee can reasonably determine that at least 500 homes were affected,



1 each unplanned outage affecting more than 500 homes for more than one hour, the time it  
2 occurred, the reason for the disruption and its causes, its estimated duration, the tax map area  
3 and, when available to a Grantee, the number of homes affected; and

4 (3) A report showing a Grantee's performance with respect to all applicable  
5 customer service standards established in 47 C.F.R. 976.309(c), this Chapter, and its Franchise  
6 agreement, signed by an officer or employee certifying its performance with these customer  
7 service standards. If a Grantee is unable to certify full compliance for any calendar quarter, it  
8 must indicate in its filing each standard with which it is in compliance and in noncompliance, the  
9 dates of noncompliance, the reason for the noncompliance and a remedial plan. A Grantee that  
10 fails to file a compliance certificate or noncompliance statement as required herein shall be liable  
11 for the penalty specified for violation of customer service standards in this Chapter. A Grantee  
12 shall keep such records as are reasonably required to enable the County to determine whether a  
13 Grantee is substantially complying with all such customer service standards, and shall maintain  
14 adequate procedures to demonstrate substantial compliance.

15 (e) Unless this requirement is waived in whole or in part by the County, a Grantee  
16 shall deliver to the County the following special reports:

17 (1) A Grantee shall submit monthly construction reports and weekly status  
18 reports after the effective date for any construction undertaken during the term of a Franchise  
19 agreement until such construction is complete, including any rebuild that may be specified in a  
20 Franchise agreement. If consistent with a Grantee's Franchise agreement, a Grantee shall  
21 provide the County, free of charge, twenty-four hour/seven day a week remote read-only access  
22 to a Grantee's as-built system design maps (which the County may print by section, but not in

1 their entirety), including any physical connections and software necessary to provide such  
2 access, subject to the County's signing any requisite software license agreement;

3 (2) A Grantee shall submit a full explanation and copy of any notice of  
4 deficiency, forfeiture, or other document relating to the Grantee issued by any state or federal  
5 agency if the notice or other document would require Securities and Exchange Commission  
6 Form 8(k) disclosure or would require footnote disclosure in the annual financial statements of  
7 the Grantee or a parent or partner. This material shall be submitted in accordance with deadlines  
8 specified by the Communications Administrator;

9 (3) A Grantee shall submit a copy and an explanation of any request for  
10 protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the  
11 Grantee or by any partnership or corporation that owns or controls the Grantee directly or  
12 indirectly. This material shall be submitted in accordance with deadlines specified by the  
13 Communications Administrator;

14 (4) A Grantee shall submit a full description and explanation within thirty  
15 days of any change or acquisition of control of a Grantee that would be cognizable pursuant to  
16 47 C.F.R. § 73.3555 (Notes 1, 2, and 3) or any change or substitution in the managing general  
17 partners of a Grantee, where applicable. "Control" for purposes of this definition is not limited  
18 to majority stock ownership, but includes actual working control in whatever manner exercised.

19 (5) A Grantee shall summarize the results of any annual opinion surveys it  
20 conducts as part of its annual report provided that, if a Grantee considers such results to be  
21 proprietary, it shall make such results available at its offices for the County's review.

22 (f) The County may, upon reasonable written notice, require such additional  
23 information with respect to the reports to be submitted pursuant to this Chapter or a Franchise

- 1 agreement as may be reasonably necessary for the performance of any of the Communications
- 2 Administrator's or any other County official's duties.

**ARTICLE 7.****System Operations.****Section 9.1-7-1. Franchise areas.**

Applications for a Franchise will be accepted for one or more of the following Franchise areas:

(a) *Reston Franchise Area:* That portion of Fairfax County beginning at the intersection of Fox Mill Road, Route No. 665, and Stuart Mill Road, Route No. 671; thence proceeding in a northwesterly direction on Fox Mill Road, Route No. 665, to a point where Fox Mill Road crosses the Columbia Gas Transmission Corporation pipeline easement; thence following said pipeline easement in a northeasterly direction to the Dulles Airport Access Road; thence westerly on the Dulles Airport Access Road to the easterly limits of the Town of Herndon; thence northeasterly along the boundary of the Town of Herndon to Elden Street, Route No. 606, said point also being at the intersection of Stuart Road, Route No. 680, thence northeasterly on Stuart Road, Route No. 680, to Sugarland Road, Route No. 604; thence northeasterly on Sugarland Road, Route No. 604, to Leesburg Pike, Route No. 7; thence southeasterly on Leesburg Pike, Route No. 7, to Baron Cameron Avenue, Route No. 606; thence southwesterly on Baron Cameron Avenue, Route No. 606, to Hunter Mill Road, Route No. 674; thence following Hunter Mill Road, Route No. 674, thence southerly to the northeastern corner of that parcel identified by Fairfax County Tax Map Reference No. 18-3, 001, parcel 1; thence following southwesterly along the northern boundary of parcel 1 to the northern boundary of the Equestrian Park subdivision; thence following the northern and western boundaries of the Equestrian Park subdivision to the intersection of Sunset Hills Road, Route No. 675; thence following Sunset Hills Road easterly to the intersection of Hunter Mill Road, Route No. 674;

1   thence following Hunter Mill Road southerly to the intersection of Sunrise Valley Drive, Route  
2   No. 5320; thence proceeding southeasterly along the eastern boundary of Reston, Section 22, to  
3   the eastern corner of that parcel identified by Fairfax County Tax Map Reference No. 27-2, 005,  
4   parcel 57; thence following southwesterly along the eastern border of Reston, Section 22, and  
5   Reston, Section 24; thence following the southern boundary of Reston, Section 24 and Reston,  
6   Section 24A; thence proceeding southeasterly along the eastern boundary of that parcel identified  
7   by Fairfax County Tax Map Reference No. 27-1, 0012, parcel 3; thence following southeasterly  
8   along the eastern boundary of Reston, Section 10, to the intersection of Lawyers Road, Route  
9   No. 673, and Hunter Station Road, Route No. 677; thence proceeding westerly on Lawyers  
10   Road, Route No. 673, past the intersection of Birdfoot Lane, Route No. 671, to the northeast  
11   corner of the Lawyer's Glen subdivision; thence proceeding southwesterly along the southern  
12   and eastern boundaries of the Lawyer's Glen subdivision; thence following northwesterly along  
13   the western boundary of the Lawyer's Glen subdivision to a point of intersection with the  
14   southeast corner of the Lawyer's Ridge subdivision; thence proceeding southwesterly along the  
15   southern boundary of the Lawyer's Ridge subdivision to a point of intersection with the eastern  
16   boundary of Reston, Section 18; thence following southeasterly to a point of intersection with the  
17   eastern corner of the Stoneledge subdivision; thence proceeding in a southerly direction along  
18   the eastern boundary of the Stoneledge subdivision; thence following in a westerly direction  
19   along the northern boundary of five parcels identified by Fairfax County Tax Map Reference  
20   Nos. 36-2, 001, parcel 2A, 13A, 13, 12A and 11, to a point of intersection with the southernmost  
21   corner of Reston, Section 18: thence proceeding in a westerly direction along the southern  
22   boundary of Reston; Section 18, to a point of intersection with the eastern boundary of Reston,  
23   Section 16; thence following southwesterly from said intersection along the eastern boundary of

1 Reston, Section 16 to the northeastern boundary of that parcel identified by Fairfax County Tax  
2 Map Reference No. 36-2, 009, parcel 2; thence proceeding northerly along the northeastern  
3 boundary of that parcel identified by Fairfax County Tax Map Reference No. 36-2, 009, parcel 2,  
4 to the border of that parcel identified by Fairfax County Tax Map Reference No. 36-2, 009,  
5 parcel 1; thence following southwesterly on the southeastern boundary of those two parcels  
6 identified by Fairfax County Tax Map Reference Nos. 36-2, 009, parcel 1 and 3, to the  
7 intersection of the southeastern boundary of Fox Mill District Park; thence following the eastern  
8 and northern boundaries of Fox Mill District Park northwesterly to Fox Mill Road, Route No.  
9 665; thence northwesterly on Fox Mill Road, Route No. 665, to the intersection of Fox Mill  
10 Road, Route No. 665, and Reston Avenue, Route No. 602; thence following Reston Avenue,  
11 Route No. 602, northeasterly to the intersection of Fox Mill Road, Route No. 665; thence  
12 northwesterly on Fox Mill Road, Route No. 665, to the point where Fox Mill Road, Route No.  
13 665, crosses the Columbia Gas Transmission Corporation pipeline easement, being the point of  
14 beginning.

15 Whenever the Reston Franchise area is described by reference to the Columbia Gas  
16 Transmission Corporation pipeline easement or to roads, the Franchise area shall be delineated  
17 by the line following the middle of the aforementioned pipeline easement or roads. However, if  
18 construction of the Reston Franchise reasonably requires a Grantee to use poles or easements  
19 along any roadway which serves as a border for that Franchise area, and if such poles or  
20 easements are located beyond the centerline of any such roadway, and if the Grantee obtains  
21 proper permission for the use of such poles or easements and pays any applicable usage or  
22 attachment fees, then the Grantee may use such poles or easements to construct and operate its  
23 system in the Reston Franchise area so long as the Grantee does not provide Cable service to an

1 area for which it does not hold a Franchise. The map which shows the above-described  
2 boundaries and which is dated May 18, 1988, is incorporated herein and is designated as the  
3 official map of the Reston Franchise area. That map shall be kept by the Clerk to the Board  
4 among the official records of the Board of Supervisors, and to the extent that the boundaries of  
5 the map and the boundaries described by the text of this Subsection are in conflict either by  
6 realignment of a road or otherwise, and where it cannot be determined clearly where the  
7 boundary may lie, then the boundaries shown on the official map shall take precedence over the  
8 text of this Subsection.

9 (b) *North County:* The area of the County north of a line beginning at the intersection  
10 of Little River Turnpike, Route No. 236, and westerly city limits of the City of Alexandria;  
11 thence westerly along Little River Turnpike, Route No. 236, to the eastern boundary of the City  
12 of Fairfax; thence along the eastern and northern boundary of the City of Fairfax to Jermantown  
13 Road, Route No. 665; thence northeasterly on Jermantown Road to Oakton Road, Route No.  
14 644; thence westerly on Oakton Road, Route No. 644, to Waples Mill Road, Route No. 664;  
15 thence westerly on Waples Mill Road to West Ox Road, Route No. 608; thence northwesterly on  
16 West Ox Road, Route No. 608, to Centreville Road, Route No. 657; thence northerly on  
17 Centreville Road to Frying Pan Road, Route No. 608; thence northwesterly on Frying Pan Road  
18 to the end of said road; thence due west to point in the center of Sully Road, Route No. 28;  
19 thence north on Sully Road to the County line, for the point of ending; excluding Reston as  
20 defined herein, the Town of Herndon, and the Town of Vienna.

21 Whenever the North County Franchise area is described by reference to the Columbia  
22 Gas Transmission Corporation pipeline easement or to roads, the Franchise area shall be  
23 delineated by the line following the middle of the aforementioned pipeline easement or roads.

1 However, if construction of the North County Franchise area reasonably requires a Grantee to  
2 use poles or easements along any roadway which serves as a border for that Franchise area, and  
3 if such poles or easements are located beyond the centerline of any such roadway, and if the  
4 Grantee obtains proper permission for the use of such poles or easements, then the Grantee may  
5 use such poles or easements to construct and operate its system in the North County Franchise  
6 area so long as a Grantee does not provide cable service to an area for which it does not hold a  
7 Franchise.

8 The map which shows the boundaries of the Reston Franchise is designated above as the  
9 official map of the Reston Franchise area. To the extent that the boundaries of that map and the  
10 boundaries described by the text of this subsection are in conflict, either by realignment of a road  
11 or otherwise, and where it cannot be determined clearly where the boundary may lie, then the  
12 boundary between the Reston Franchise area and the North County Franchise area, as shown on  
13 the official map, shall take precedence over the text of this subsection.

14 (c) *South County:* That area of the County lying south of the southern border of the  
15 North County Franchise area.

16 **Section 9.1-7-2. Cable service and system description.**

17 (a) A Grantee shall make its Cable services available at all residences, businesses and  
18 other structures within its Franchise area or areas as long as the current or potential Subscriber's  
19 financial and other obligations to the Grantee are satisfied. A Grantee shall make Cable service  
20 available without line extension surcharges to at least 85% of the total occupied dwelling units in  
21 its Franchise area or areas pursuant to the terms and conditions specified in its Franchise  
22 agreement. A Grantee may refuse to provide Cable service when: (i) it is unable pursuant to  
23 normal industry practice to obtain necessary programming, real property or access rights; (ii)



1 when its prior service, payment, or theft of service history with a Person has been unfavorable;  
2 or, (iii) pursuant to written waiver by the Communications Administrator or designee.

3 (b) A Cable system to be installed by a Grantee shall meet or exceed the technical  
4 standards set forth in 47 C.F.R. § 76.601, et seq., including applicable amendments thereto, and  
5 any other applicable technical standards (to the extent permitted by law). If the FCC should  
6 delete these standards; or otherwise fail to preempt this area of regulation, the County may  
7 prescribe technical standards, to the extent permitted by applicable law.

8 (c) As authorized by 47 U.S.C. § 531, a Grantee shall provide PEG access. Such  
9 PEG access channel capacity, facilities, and financial support shall be provided as specified in its  
10 Franchise agreement.

11 (d) A Grantee shall provide without charge within its Franchise area(s), one activated  
12 service outlet and free regular subscriber service to each fire station, public school, police  
13 station, public library, and such buildings used for public purposes as may be designated by the  
14 County; provided, however, that if it is necessary to extend a Grantee's trunk or feeder lines more  
15 than three hundred feet solely to provide service to any such school or public building, the  
16 County shall have the option of paying the Grantee's direct costs for such extension in excess of  
17 three hundred feet, or of releasing the Grantee from or postponing the Grantee's obligation to  
18 provide service to such building. Furthermore, a Grantee shall not be permitted to recover, from  
19 any public building owner entitled to free service, more than the Grantee's actual cost for any  
20 additional converters required and the direct cost of installing, when requested so to do, more  
21 than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred  
22 fifty feet of drop cable; provided, however, that the Grantee shall not charge for the provision of  
23 regular subscriber service to the additional service outlets so installed in public schools, police

1 stations, fire stations, public libraries, and County offices in addition to any such other public  
2 facilities as are specified in the Grantee's Franchise agreement. The Grantee shall provide full  
3 operational capability to the service outlets in its Franchise area. The County, at its sole  
4 discretion, may waive the provisions of this Subsection in exchange for goods and/or services of  
5 equal value to the County.

6 **Section 9.1-7-3. Line Extension Requirements.**

7 (a) Subject to the requirements established in [Subsection 9.1-7-2 \(a\)](#), a Grantee may  
8 condition the extension of its Cable service to lower density areas of the County on the potential  
9 Subscriber's payment of a line extension surcharge. Such extensions shall be subject to the least  
10 burdensome of: (i) the line extension requirements of its Franchise agreement; or, (ii) the line  
11 extension requirements in any other Franchise agreement then in effect for the same Franchise  
12 area. For the purposes of this Subsection, "least burdensome" means those requirements for line  
13 extension that take effect at the highest densities of occupied dwelling units per-mile-passed at  
14 which line extension surcharges could be applied.

15 (b) To the extent that may be allowed by a Grantee's Franchise agreement or by  
16 federal or state law, the County may require such Grantee to interconnect its Cable system with  
17 other cable systems or other broadband communications facilities (e.g., a television  
18 communication network connecting public institutions or facilities) located adjacent to or within  
19 the County. Interconnection shall be made at such time as provided by applicable Franchise  
20 agreement or within one hundred eighty days from the effective date of a request by the County,  
21 or within a longer period of time as may be specified by the County in its request. No  
22 interconnection shall take place without the prior approval of the County. All signals to be  
23 interconnected shall comply with FCC technical standards for all classes of signals.

(c) Each Grantee shall make every reasonable effort to cooperate with cable Franchise holders in contiguous communities in order to provide Cable service in areas within the County.

(d) The County shall make every reasonable effort to cooperate with the franchising authorities in contiguous communities, and with each Grantee, in order to provide Cable service in areas outside the County.

**Section 9.1-7-4. Operational requirements and construction.**

(a) A Grantee shall construct, operate, and maintain its Cable system subject to the supervision of the County or its designees, and in compliance with all applicable laws, ordinances, rules and regulations, including any amendments thereto. The Cable system and all its parts shall be subject to inspection by the County. The County may review a Grantee's construction plans prior to commencement of construction.

(b) A Grantee shall design, construct, operate, and maintain the system at all times so that signals carried are delivered to Subscribers with the minimum material degradation in quality.

(c) No construction, reconstruction or relocation of a system or any part thereof within the public ways shall be commenced until all applicable written permits have been obtained. The County may impose such conditions and regulations as are necessary for the purpose of protecting any structures in the public ways and for the proper restoration of such public ways and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(d) A Grantee shall perform maintenance on its system so that activities likely to result in an interruption of service are performed during periods of minimum Subscriber use of

1 the system. A Grantee shall provide reasonable notice to Subscribers and the County before  
2 interrupting service for planned maintenance or construction that is expected to take one hour or  
3 more. Notice shall be provided by a method reasonably calculated to give Subscribers actual  
4 notice of the planned interruption.

5 (e) Maintenance of a system shall be performed in accordance with technical  
6 performance and operating standards established pursuant to FCC rules and regulations. The  
7 County may monitor a Grantee's maintenance practices and, to the extent permitted by  
8 applicable law, may waive requirements or adopt additional requirements as reasonable to ensure  
9 the system remains capable of providing high-quality service.

10 (f) A Grantee shall install and thereafter maintain for use by the County an  
11 Emergency Alert System ("EAS").

12 (1) This EAS shall at all times be operated in compliance with FCC  
13 requirements. Subject to the foregoing, the EAS shall be remotely activated by telephone and  
14 shall allow a representative of the County to override the audio and video on all channels on a  
15 Grantee's Cable system that may lawfully be overridden (subject to any contractual or other  
16 rights of local broadcasters) without the assistance of the Grantee, for emergency broadcasts  
17 from a location designated by the County in the event of a civil emergency or for reasonable  
18 tests.

19 (2) The County will provide reasonable notice to a Grantee prior to any test  
20 use of the EAS. A Grantee shall cooperate with the County in any such test to the maximum  
21 extent feasible.

22 **Section 9.1-7-5. Tests and performance monitoring.**

1           (a)     A Grantee shall perform all tests necessary to demonstrate compliance with the  
2 requirements of a Franchise agreement and other performance and technical standards  
3 established by applicable law or regulation, and to ensure that system components are operating  
4 as expected. All tests shall be conducted in accordance with federal rules and the most recent  
5 and relevant edition of the National Cable Television Association's "Recommended Practices for  
6 Measurements on Cable Television Systems," or if no recent or relevant edition exists, such  
7 other appropriate manual as a Grantee proposes and the County approves. In the event that  
8 technical performance standards pursuant to Federal law are repealed or are no longer applicable  
9 to a Cable system, such standards shall remain in force and effect until the County, to the extent  
10 permitted by applicable law, imposes standards as it shall deem necessary for the operation of the  
11 Cable system in accordance with good engineering practices. The words "good engineering  
12 practices" shall have the meaning specified in Title 47 of the Code of Federal Regulations.

13           (b)     A Grantee shall conduct tests as follows:

- 14                   (1)     acceptance tests on each newly constructed or rebuilt segment prior to  
15                             Subscriber connection or activation, but not later than ninety days after  
16                             any newly constructed or substantially rebuilt segment is made available  
17                             for service to Subscribers;
- 18                   (2)     proof of performance tests on the system at least once every six months or  
19                             as required by FCC rules, whichever is more often, except as federal law  
20                             otherwise limits a Grantee's obligation; and
- 21                   (3)     special tests at the direction of the Communications Administrator.

22           (c)     At any time after commencement of service to Subscribers, the County may  
23 require additional reasonable tests, including full or partial repeat tests, different test procedures,

1 or tests involving a specific Subscriber's terminal, at a Grantee's expense, to the extent such tests  
2 are in accordance with FCC rules and may be performed by the Grantee's employees utilizing its  
3 existing facilities and equipment. The County may conduct independent tests upon reasonable  
4 notice to the Grantee and if noncompliance is found, the expense thereof shall be borne by the  
5 Grantee. The County will endeavor to arrange its request for such tests so as to minimize  
6 hardship or inconvenience to a Grantee or to Subscribers.

7 (d) System monitor test points shall be established in accordance with good  
8 engineering practices and shall be approved in advance by the County.

9 (e) Tests shall be supervised by a Grantee's senior engineer, who shall sign all  
10 records of tests provided to the County.

11 (f) The County shall have the right to witness and/or review all tests on newly  
12 constructed or rebuilt segments of a Grantee's Cable system. A Grantee shall provide the County  
13 with at least two business days' notice of, and an opportunity to observe, any such tests  
14 performed on the Grantee's System.

15 (g) A written report of all test results shall be filed with the County within seven days  
16 of each test. Such reports shall, at a minimum, describe test results, instrumentation, calibration  
17 and test procedures. In addition, the Grantee shall retain written reports of the results of any tests  
18 required by the FCC, and such reports shall be submitted to the County upon the County's  
19 request. The County shall have the same rights the FCC has to inspect a Grantee's performance  
20 test data.

21 (h) If any test indicates that any part or component of a system fails to meet  
22 applicable requirements, the Grantee, without requirement of additional notice or request from  
23 the County, shall take corrective action, retest the locations and advise the County of the action

1 taken and results achieved, and supply the County with a copy of the results within thirty days  
2 from the date corrective action was completed.

3 (i) The County may also conduct inspections of construction areas and Subscriber  
4 installations, including but not limited to inspections to assess compliance with a Grantee's  
5 construction and installation requirements. The County shall notify a Grantee of any violations  
6 found during the course of inspections, identifying the locations with particularity and stating the  
7 specific nature of the violation. The Grantee must bring violations specified in the notice that are  
8 within Grantee's control into compliance as follows: (i) safety violations must be made safe  
9 within forty-eight hours of receiving notice of the violation; (ii) Virginia Department of  
10 Transportation violations must be brought into compliance within five days of receiving notice  
11 of the violation; and all other violations must be brought into compliance within thirty days of  
12 receiving notice of the violation. After the specified time period, the Grantee must submit a  
13 report to the County describing the steps it has taken to bring itself into compliance. Inspection  
14 does not relieve a Grantee of its obligation to build in compliance with all provisions of a  
15 Franchise.

16 **Section 9.1-7-6. Customer service standards and consumer protection.**

17 This Section sets forth the minimum customer service standards that a Grantee must  
18 satisfy. In addition, a Grantee shall at all times satisfy any additional or stricter minimum  
19 requirements established by a Franchise agreement or other applicable federal, state, or local law  
20 or regulation, as the same may be amended from time to time, including, without limitation,  
21 consumer protection laws.

22 (a) A Grantee shall comply with the customer service standards set forth in 47 C.F.R.  
23 § 76.309 (c), as such standards may be amended from time to time.

1 (b) A Grantee shall employ an operator or maintain a telephone answering device  
2 twenty-four hours per day, each day of the year, to receive Subscriber complaints.

3 (c) A Grantee shall maintain an office within the County that shall be open and  
4 accessible to the public with adequate telephone service during normal business hours.

5 (d) A Grantee shall establish maintenance service capable of promptly locating and  
6 correcting system malfunctions. Said maintenance service shall respond at all hours to correct  
7 system malfunctions affecting one or more percent of a Grantee's total number of Subscribers.

8 (e) A Grantee shall maintain a publicly-listed, local toll-free telephone number that  
9 shall be available to Subscribers to request service calls, twenty-four hours per day, each day of  
10 the year. Under Normal operating conditions, corrective action shall be initiated by a Grantee  
11 not later than the next business day after a service call is received, and corrective action shall be  
12 completed as promptly as practicable. Appropriate records shall be made of service calls,  
13 showing when and what corrective action was completed.

14 (f) A Grantee shall arrange for pickup and/or replacement of converters or other  
15 Grantee equipment at the Subscriber's address or by a satisfactory equivalent (such as the  
16 provision of a postage-prepaid mailer) if requested by a mobility-limited customer.

17 (g) In the event that service to Subscribers is totally interrupted for more than 24  
18 hours, Grantee shall provide the affected Subscribers with a pro rata credit or rebate of the  
19 Subscriber's fees paid or payable.

20 (h) The failure of a Grantee to hire sufficient staff or to properly train its staff shall  
21 not justify a Grantee's failure to comply with the provisions in this Section.

22 (i) A Grantee shall maintain a public file containing all notices provided to  
23 Subscribers under these customer service standards. The notices shall be placed immediately in



the public file and maintained for at least one year from the date of the notice.

(j) A Grantee shall establish a clear procedure for resolving complaints filed by Subscribers. Complaints may be made orally or in writing, at the complainant's option.

(k) A Grantee shall provide an initial response to a complaint within five days of its receipt and a final written response within thirty days after a written complaint is received. The final written response shall include a notice stating that if the complaint has not been resolved to the complainant's satisfaction, the matter may be referred to the Communications Administrator.

(l) The customer service standards set forth herein shall be in addition to the rights and remedies provided by the Virginia Consumer Protection Act of 1977, as amended.

**Section 9.1-7-7 Street occupancy; Construction standards and procedures.**

(a) All installation of electronic equipment shall be of a permanent nature, using durable components.

(b) A Grantee shall maintain all wires, conduits, cables, and other real and personal property and facilities comprising its Cable system in good condition, order and repair.

(c) No construction, upgrade, rebuild, reconstruction or relocation of a Cable system, or any part thereof, within any public way shall be commenced unless valid permits have been obtained. A Grantee assumes the full burden of risk in securing the required permits. Failure to obtain required permits or other approvals shall in no way relieve a Grantee of its obligations under this Chapter and/or a Franchise agreement, except that in case of emergency, a Grantee may carry out work to the extent necessary pending the issuance of such permits, as long as the Grantee acts to secure the permits as soon as possible.

(d) In the event of disturbance of any road or private property by a Grantee, it shall, at its own expense and in a manner approved by the County, replace and restore such road or private

1 property in as good a condition as before the work causing the disturbance was done. In the event  
2 the Grantee fails to perform such replacement or restoration, the County shall have the right to do so  
3 at the sole expense of the Grantee. Payment to the County for such replacement or restoration shall  
4 be upon demand. Nothing in this Section shall be construed to impair any rights of the owners of  
5 such private property to assert any claim against a Grantee arising out of such disturbance.

6 (e) A Grantee shall cooperate with all gas, electric, telephone, water, sewer, and other  
7 utilities in the placement of its facilities, equipment, or fixtures, so as to minimize the costs and  
8 disruption caused by its construction or maintenance activities.

9 (f) A Grantee shall maintain the service of, shore up, sling, support, protect and make  
10 good, as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections,  
11 conduits, ducts, manholes, drains, vaults, buildings, tracks or other structures, sub-structures of  
12 public utility companies, and all service lines and structures, including sub-structures of private  
13 abutting owners, that are located within the lines of system construction that may be liable to  
14 disturbance or injury during the progress of the construction, and all supports, labor, and material  
15 necessary to reconnect and restore all such structures that become disturbed or damaged to their  
16 original condition shall be provided by the Grantee at its own cost and expense.

17 (g) Any and all public ways, public property, or private property that are disturbed or  
18 damaged during the construction, installation, operation, maintenance, repair, replacement, or  
19 relocation of a Cable system shall be promptly repaired by a Grantee within thirty days after the  
20 disturbance or damage, at the Grantee's sole cost and expense. The Communications  
21 Administrator may extend this thirty-day period for good cause shown.

22 (h) Upon reasonable notice, a Grantee shall, by a time specified by the County,  
23 protect, support, temporarily disconnect, relocate, or remove any of its property when required

1 by the County by reason of traffic conditions; public safety; public way construction; public way  
2 maintenance or repair (including resurfacing or widening); change of public way grade;  
3 construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks,  
4 or any other type of government-owned communications system, public work or improvement or  
5 any government-owned utility; provided, however, that a Grantee shall, in all such cases, with  
6 the County's consent, have the option of abandoning any property in place.

7 (i) If any Person that is authorized to place facilities in the public ways requests a  
8 Grantee to protect, support, temporarily disconnect, remove, or relocate its facilities to  
9 accommodate the construction, installation, operation, maintenance or repair of the facilities of  
10 such other Person, the Grantee shall, after thirty days' advance written notice, take action to  
11 effect the necessary changes requested. Unless the matter is governed by a valid contract  
12 between the parties or federal law or regulation or Virginia law, or in any cases where the Cable  
13 system that is being requested to move was not lawfully located in the public ways, then the  
14 reasonable cost of the same shall be borne by the Person requesting the protection, support,  
15 temporary disconnection, removal, or relocation and performed at no charge to the County.

16 (j) In the event of an emergency, or where a Cable system creates or is contributing  
17 to an imminent danger to health, safety, or property, or is an unauthorized use of property, a  
18 Grantee, at its own expense, shall remove, replace or relocate any or all parts of its system at the  
19 request of the County. If the Grantee fails to comply with the County's request, the County may  
20 remove, relay, or relocate any or all parts of the Grantee's Cable system without prior notice, at  
21 the sole expense of the Grantee. A Grantee shall not be responsible under this Chapter or its  
22 Franchise agreement if such County action results in a breach of any applicable obligation of a

1     Grantee. The County shall not be held liable to the Grantee for any damages arising from such  
2     removal or relocation.

3           (k)     A Grantee shall, on the request of any Person holding a valid building moving  
4     permit issued by the County, or on request of the County, temporarily raise or lower its wires to  
5     permit the moving of buildings. The expense of such temporary removal or raising or lowering  
6     of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority  
7     to require payment in advance, except in the case where the requesting Person is the County, in  
8     which case the Grantee will invoice the County, and the County will pay, following completion  
9     of work. The Grantee shall be given reasonable advance notice in writing to arrange for such  
10    temporary wire changes.

11          (l)     A Grantee shall have the authority to trim trees and shrubs on public property at  
12    its own expense as may be necessary to protect its wires and facilities, subject to the regulation,  
13    supervision and/or direction of the County or other local government authority.

14          (m)     A Grantee shall utilize existing poles, conduits and other facilities whenever  
15    possible. However, no location of any pole or wire-holding structure of a Grantee shall be a  
16    vested interest and such poles, structures, or facilities shall be removed, replaced or modified by  
17    a Grantee at its own expense whenever the County or other governmental authority determines  
18    that the public convenience would be enhanced thereby. Copies of agreements for use of  
19    conduits or other facilities shall be filed with the County upon County request.

20          (n)     Where the County, other unit of government, or a public utility serving the County  
21    desires to make use of the poles or other wire-holding structures of a Grantee but agreement therefor  
22    with the Grantee cannot be reached, the Board may require the Grantee to permit such use if the

1 Board determines that the use would enhance the public convenience and would not unduly  
2 interfere with the Grantee's operations.

3 (o) Unless otherwise regulated, all transmission lines, equipment and structures shall be  
4 installed and located to cause minimum interference with the rights and reasonable convenience of  
5 owners of property which adjoins or abuts a street, way, or other property upon which a Grantee  
6 has placed its facilities, and at all times such facilities shall be kept and maintained in a safe,  
7 adequate condition, and in good order and repair. A Grantee shall at all times employ reasonable  
8 care and shall install and maintain commonly accepted methods and devices for preventing failures  
9 and accidents that are likely to cause damage, injuries, or nuisances to the public. Suitable  
10 barricades, flags, lights, flares, or other devices shall be used at such times and places as are  
11 reasonably required for the safety of all members of the public. Any poles or other fixtures placed  
12 in any public way by a Grantee shall be placed in such a manner as not to interfere with the usual  
13 travel on such public way.

14 (p) New buried plant shall be capable of location using currently-available locating  
15 devices.

16 (q) A Grantee shall be a member of the regional notification center for subsurface  
17 installations and shall field mark the locations of its underground facilities upon request. A  
18 Grantee shall locate its facilities for the County or other governmental authority at no charge.

19 (r) No Grantee shall erect or place any towers, poles, or conduits, or construct,  
20 upgrade, or rebuild a Cable system without first obtaining County approval of a complete  
21 description of the Cable system facilities proposed to be erected or installed, including  
22 engineering drawings, if required by the County, together with a map and plans indicating the  
23 proposed location of all such facilities.

(s) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of system equipment must be properly licensed under the laws of the Commonwealth of Virginia and all local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as a Grantee would have if the work were performed by the Grantee. A Grantee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced, and that one member of each work crew is responsible for communicating in the official language of the Commonwealth with County and other governmental personnel at the work site. A Grantee shall: be responsible for ensuring that the work of contractors and subcontractors is performed consistent with its Franchise agreement and applicable laws, regulations, policies and procedures; be responsible for all acts or omissions of contractors or subcontractors; be responsible for promptly correcting acts or omissions by any contractor or subcontractor; and, have a quality control program to ensure that the work is properly performed.

(t) A Grantee shall notify the general public prior to commencing any proposed construction, except for emergency maintenance or repair, that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally. Except for emergency maintenance or repair, a Grantee shall publicize proposed construction work at least one week prior to commencement of that work by causing written notice of the construction work to be delivered to the County and by notifying those Persons most likely to be affected by the work in at least one of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. Notice to affected Persons must include the name and local telephone number of a Grantee representative who is qualified

1 to answer questions concerning the proposed construction. In addition, except for emergency  
2 maintenance or repair, before entering onto any Person's property, a Grantee shall provide  
3 reasonable notice to the resident or tenant. The Grantee shall provide affected residents or  
4 tenants with a local name and phone number they can call to discuss the Grantee's actions.

5 (u) A Grantee shall provide the Communications Administrator a daily report  
6 identifying the location and time of any scheduled maintenance and/or construction. The  
7 Grantee shall send the report in such a manner reasonably calculated to insure delivery to the  
8 Communications Administrator no later than 8:00 a.m. on the day the maintenance and/or  
9 construction is scheduled.

10 **Section 9.1-7-8. Construction schedule and reports.**

11 (a) Upon accepting a Franchise, a Grantee shall obtain all necessary federal, Virginia,  
12 and local licenses, permits and authorizations required for the conduct of its business and its initial  
13 construction, installation, operation, maintenance, and repair of its facilities. A Grantee shall submit  
14 a report to the Communications Administrator documenting its compliance with this requirement.

15 (b) Every Franchise agreement shall specify the construction schedule that will apply to  
16 any required construction, upgrade, or rebuild of a Cable system. The schedule shall provide for  
17 timely completion of the project, considering the amount and type of construction required, and  
18 shall show areas of the County that will be affected. For the purposes of this Section, construction  
19 shall be deemed to have commenced when the first aerial strands of coaxial or fiber optic cable have  
20 been attached to a pole, or the first underground trench has been opened. The failure of a Grantee to  
21 secure the necessary federal, Virginia and local licenses, permits, and authorizations required for the  
22 conduct of its business shall in no way relieve the Grantee from the obligations of this Section. The  
23 failure to meet the construction schedule specified in a Franchise agreement shall, among other

rights and remedies available to the County under a Franchise agreement or applicable law, constitute grounds for termination or revocation of the Franchise.

(c) Litigation instituted by a third party shall not suspend the Grantee's obligation to construct, install, and operate its Cable system in accordance with the construction or upgrade schedule set forth in its Franchise agreement.

(d) An initial Franchise shall include a timetable showing the percentage of occupied dwelling units within the applicable Franchise area or areas that will be capable of receiving Cable service at the end of each year following the beginning of construction.

(e) Within three months after accepting a Franchise, a Grantee shall furnish the Communications Administrator a construction schedule and map setting forth target dates consistent with paragraphs (b) and (d) of this Section, for commencement of service to Subscribers, and identifying the areas to be served. The schedule and map shall be updated whenever substantial changes become necessary.

(f) Every three months after the start of construction, a Grantee shall furnish the Communications Administrator a map that clearly defines the areas wherein regular Subscriber service is available.

(g) The Communications Administrator may waive any provision of this Section for just cause shown.

**Section 9.1-7-9. Protection of Subscriber privacy.**

(a) A Grantee shall at all times protect the privacy rights of all Subscribers, including but not limited to those rights secured by 47 U.S.C. § 551.

(b) A Subscriber may at any time revoke any written or electronic consent to release information by delivering to a Grantee in writing, by mail or otherwise, the Subscriber's decision



- 1 to revoke the authorization. Any such revocation shall be effective upon receipt by the Grantee.
- 2 Any Subscriber's prior written or electronic consent to release information shall be revoked upon
- 3 termination of a Grantee's service to that Subscriber.

**ARTICLE 8.****Open Video Systems.****Section 9.1-8-1. Applicability of Chapter.**

(a) This Chapter shall apply to open video systems that comply with 47 U.S.C. § 573, except as prohibited in U.S.C. § 573 or 47 CFR Part 76 Subpart S, as may be amended from time to time.

(b) In applying this Chapter to an open video system, "Grantee" shall be taken to refer to the open video system operator, "Cable system" to the open video system, and similar terms shall apply similarly.

**Section 9.1-8-2. Application for open video system authorization.**

(a) A Person proposing to use public ways for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of an open video system shall first obtain authorization from the Board for such use. A Person may apply for such authorization by submitting an application containing:

(1) The name and address of the applicant and an identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and affiliates of the applicant, and all Persons with five percent or more ownership interest in the applicant and its affiliates; the Persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other business affiliation and cable system ownership interest of each named Person.

(2) A detailed description of the physical facilities the applicant proposes to place in public ways.

(3) Any information that may be reasonably necessary to demonstrate compliance with the requirements of federal law, including without limitation, all applicable FCC regulations and orders.

(4) Any information that may be reasonably necessary to demonstrate compliance with the requirements of this Article.

(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the application meets all federal and state law requirements.

(6) The County may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section.

(b) Upon the Board's grant of open video system authorization, the applicant shall pay to the County an amount of Seventy-five Thousand Dollars per Franchise area. The payment shall be non-refundable, shall be made payable to the order of the "County of Fairfax" and may be used to offset in whole or in part any direct costs incurred by the County in granting the authorization.

**Section 9.1-8-3. Fee in lieu of franchise fee.**

An open video system operator shall pay to the County a fee in lieu of the franchise fee required in this Chapter, pursuant to the terms, procedures and conditions specified in this Chapter for franchise fees.

**Section 9.1-8-4. Public, educational, and governmental access obligations.**

An open video system operator shall be subject to obligations pertaining to public, educational, and governmental access pursuant to 47 CFR § 76.1505.

**Section 9.1-8-5. Usage of public ways.**

(a) An open video system operator shall be subject to all requirements of state and local law regarding authorization to use or occupy the public ways, except to the extent specifically prohibited by federal law. FCC approval of an open video system operator's certification pursuant to 47 U.S.C. § 573 shall not confer upon such operator any authority to use or occupy the public ways that the operator would not otherwise possess.

(b) No Person shall construct, install, maintain or operate an open video system or part of an open video system on, over, through, or within a public way in the County, or on, over, through, or within any other public property of the County, unless an agreement has first been obtained pursuant to the provisions of this Article, and unless such open video system agreement is in full force and effect.

**ARTICLE 9****General Provisions.****Section 9.1-9-1. Limits on Grantee's recourse.**

Except as expressly provided in this Chapter or a Franchise agreement, a Grantee shall have no recourse against the County for any loss, expense or damage resulting from the terms and conditions of this Chapter or the Franchise or because of the County's enforcement thereof nor the County's failure to have the authority to grant the Franchise. A Grantee expressly agrees upon its acceptance of a Franchise that it does so relying upon its own investigation and understanding of the power and authority of the County to grant said Franchise.

**Section 9.1-9-2. Special license.**

The County reserves the right to issue a license, easement or other permit to anyone other than a Grantee to permit that Person to traverse any portion of a Grantee's Franchise area within the County in order to provide service outside the County. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize or permit said Person to use the County's public ways to provide Cable service of any nature to any home or place of business within the County, or to render any service or connect any Subscriber within the County to the Grantee's Cable system.

**Section 9.1-9-3. Franchise validity.**

A Grantee agrees, by its acceptance of a Franchise, to accept the validity of the terms and conditions of this Chapter and its Franchise in their entirety and that it will not, at any time, proceed against the County in any claim or proceeding challenging any term or provision of this Chapter or its Franchise as unreasonable, arbitrary or void, or that the County did not have the authority to impose such term or condition.

**Section 9.1-9-4. Failure to enforce Franchise.**

A Grantee shall not be excused from complying with any of the terms and conditions of this Chapter or its Franchise by any failure of the County, upon any one or more occasions, to insist upon a Grantee's performance or to seek a Grantee's compliance with any one or more of such terms or conditions.

**Section 9.1-9-5. Rights reserved to the County.**

The County hereby expressly reserves the following rights:

1. To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the County.

2. To adopt, in addition to the provisions contained herein, in a Franchise agreement and in ordinances, such additional regulations as it shall find necessary in the exercise of its police power.

3. The right to amend this Chapter.

**Section 9.1-9-6. Employment requirement.**

A Grantee shall adhere to the Equal Employment Opportunity regulations of the FCC and to all federal, Virginia and local laws and executive orders pertaining to discrimination, equal employment opportunity and affirmative action that are applicable to a Grantee.

**Section 9.1-9-7. Time of essence.**

Whenever this Chapter or a Franchise agreement sets forth any time for any act to be performed by or on the behalf of a Grantee, such time shall be deemed of the essence and the Grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the County to invoke the remedies available under the terms and conditions of this Chapter and its Franchise agreement.

**Section 9.1-9-8. Acceptance.**

(a) An applicant or Grantee to whom the Board grants one or more non-exclusive Franchises shall, in addition to the non-refundable application fee specified herein, pay to the County at the time the Grantee files its Franchise agreement acceptance, Seventy-five Thousand Dollars per Franchise area. The payment shall be non-refundable, shall be made payable to the order of the "County of Fairfax" and may be used to offset in whole or in part any direct costs incurred by the County in granting the Franchise.

(b) A Grantee acknowledges by its acceptance of a Franchise that it has not been induced to accept the same by any promise, oral or written, by or on behalf of the County or by any third Person regarding any term or condition of this Chapter or a Franchise agreement which is not expressed therein, and that no promise or inducement, oral or written, has been made to any County employee or official regarding receipt of a cable Franchise.

(c) A Grantee acknowledges by its acceptance of a Franchise that it has carefully read the terms and conditions of this Chapter and the Franchise agreement and accepts all of the terms and conditions imposed by this Chapter and the Franchise agreement and agrees to abide by the same.

(d) A Franchise and all of its terms and conditions shall be accepted by a Grantee by written instrument filed with the County Executive within thirty calendar days after the granting of the Franchise.

**Section 9.1-9-9. Financial penalties.**

(a) For violation of this Chapter or a Franchise agreement entered into pursuant to this Chapter, penalties shall be assessable against a Grantee. Such penalties shall: (i) be chargeable to the Grantee, its performance bond, or any other security fund of the Grantee, in

1 any amount up to the limits specified below, at the County's discretion; (ii) be subject to cure  
2 periods, to the extent listed below, that begin to run at the time the Grantee is notified in writing  
3 of a penalty by the County; and, (iii) not be deemed cured without written evidence from a  
4 Grantee and acceptance thereof by the County for those violations that are subject to a cure  
5 period. The County may waive the penalties specified in this Section for good cause shown.

6 (1) For failure to submit any required plans indicating expected dates of  
7 installation of various parts of the system: a penalty of \$400 per day for each day the plans are  
8 not submitted beyond a seven day cure period;

9 (2) For failure to commence operations in accordance with the requirements  
10 of a Franchise agreement: penalty of \$1,000 per day for each day commencement of operations  
11 in accordance with such requirements is delayed beyond a thirty day cure period;

12 (3) For failure to substantially complete construction and installation of a  
13 system in accordance with this Chapter and/or a Franchise agreement: a penalty of \$2,000 per  
14 day for each day the construction or installation is delayed beyond a thirty day cure period;

15 (4) For a transfer without approval: a penalty of \$2,000 per day for each day  
16 the transfer remains in effect without the County's approval;

17 (5) For failure to comply with requirements for PEG use of the system: a  
18 penalty of \$1,000 per day for each day compliance is delayed beyond a fourteen day cure period;

19 (6) For failure to provide complete and accurate information, reports, or  
20 filings lawfully required under a Franchise agreement or applicable law or by the County: a  
21 penalty of \$200 per day for each day that each such filing is delayed beyond a thirty day cure  
22 period;



(7) For violation of a customer service standard as set forth in [Section 9.1-7-6](#): a penalty of \$200 per violation, treating each failure to comply as a separate violation;

(8) For failure to render payment for reimbursement of any franchise expenses, or failure to pay franchise fees or liquidated damages: a penalty of \$100 for each day each such payment is delayed;

(9) For failure to file, obtain or maintain any required performance bond or other security fund in a timely fashion: a penalty of \$200 per day for each day compliance is delayed;

(10) For failure to restore damaged property: a penalty of \$50 per day for each day such property is not replaced beyond a ten day cure period, in addition to the cost of the restoration as required in this Chapter or a Franchise agreement;

(11) For violation of technical standards pursuant to federal law: a penalty of \$100 per day for each day the violation is not remedied beyond a seven day cure period;

(12) For rate regulation violations or failure to conform to County orders or resolutions, for each day that the same violation occurs or continues: a penalty of \$200 for each day the violation is not remedied;

(13) For violation of federal, Virginia, or local privacy requirements: a penalty of \$1,000 per incident; and

(14) For any other violations of this Chapter, a Franchise agreement or other applicable law: a penalty of \$200 per day for each violation for each day the violation is not remedied beyond a seven day cure period.

(b) To the extent that financial penalties are applied to a Grantee under this Section, the Grantee shall not be subject to liquidated damages established in a Franchise agreement for the same violation.

(c) Violation of this Chapter shall be subject to such other remedies and penalties as shall be prescribed by law or ordinance.

**Section 9.1-9-10. Severability.**

If any section of this Chapter or a Franchise agreement, or any portion thereof, is held invalid or unconstitutional by any court of competent jurisdiction or administrative agency, such decision shall not affect the validity of the remaining portions.

**Section 9.1-9-11. Preemption.**

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Chapter, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision herein that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on all Grantees, without the requirement of further action on the part of the County.

**Section 9.1-9-12. Connections to the Cable system; Use of Antennas.**

To the extent consistent with federal law, Subscribers shall have the right to attach devices to a Grantee's Cable system to allow them to transmit signals or service to video cassette recorders, receivers and other terminal equipment, and to use their own remote control devices and converters, and other similar equipment, so long as such devices do not interfere with the operation of a Grantee's Cable system, or the reception of any cable Subscriber, nor serve to

1 circumvent a Grantee's security procedures, nor for any purpose to obtain services illegally. A  
2 Grantee shall provide information to consumers that will allow them to adjust such devices so  
3 that they may be used with a Grantee's Cable system.

4  
5 2. That Chapter 9 of the Fairfax County Code is repealed.

6  
7 3. That any person providing cable service within the County on the effective date of this  
8 ordinance pursuant to a cable Franchise previously granted by the Board, who was in full  
9 compliance with Fairfax County Code [Section 9-5-12](#) and that cable Franchise prior to the  
10 effective date of this ordinance and who continues to meet the requirements established therein,  
11 shall be deemed to be in compliance with Fairfax County Code [Section 9.1-5-9](#) while that cable  
12 Franchise remains in force and effect.

13  
14 4. That the provisions of this ordinance are severable, and if any provision of this ordinance  
15 or any application thereof is held invalid, that invalidity shall not affect the other provisions or  
16 applications of this ordinance which can be given effect without the invalid provision or  
17 application.

18  
19 5. That this ordinance shall become effective on adoption.